



Inland Revenue Department

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 35 (REVISED)

CONCESSIONARY DEDUCTIONS: SECTIONS 26E AND 26F

HOME LOAN INTEREST

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in May 2007.

WONG Kuen-fai
Commissioner of Inland Revenue

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CONTENT

| | Paragraph |
|--------------------------------------------------------------------|------------------|
| Introduction | |
| The legal framework | 1 |
| Home loan interest | |
| Conditions for deduction | 3 |
| Interest paid in the year of assessment | 4 |
| Deduction restricted to interest paid | 5 |
| Maximum deduction | 6 |
| Ownership | |
| - Legal owner | 7 |
| - Sole owner | 8 |
| - Joint tenants | 9 |
| - Tenants in common | 10 |
| - Maximum interest deduction | 12 |
| Dwelling as a place of residence | |
| - Actually used as a place of residence | 13 |
| - Partly used as a place of residence | 14 |
| - Wholly used as a place of residence for part year | 15 |
| - Change of place of residence | 16 |
| Principal place of residence | 17 |
| - Matter of fact and degree | |
| - Employer-provided accommodation | 19 |
| - Married couple's principal place of residence | 20 |
| Place of residence for year of marriage and separation/ divorce | 24 |
| Leaving Hong Kong for extended periods | 27 |
| Rateable unit | 28 |

| | |
|---------------------------------------------------------------|----|
| Home loan | 29 |
| Entitlement years for deduction | 36 |
| Car parking spaces | 38 |
| Revocation of claims | 39 |
| Specified bodies and recognized organizations or associations | 41 |
| Property transfers intended to obtain a tax benefit | 44 |
| Nomination of spouse to claim deduction | |
| General rules for nomination | 45 |
| Recoverable of nomination | 46 |
| Processing deduction claim | |
| Illustrative examples | |
| - Salaries tax | 47 |
| - Personal assessment | 52 |

INTRODUCTION

The legal framework

Concessionary deduction is granted to persons for interest paid on mortgages obtained to finance the acquisition of their homes. Unlike personal allowances in Part 5, which do not apply to persons charged at standard rate, concessionary deductions in Part 4A are granted to all persons subject to salaries tax or electing personal assessment. The implementing legislation was first introduced by the Inland Revenue (Amendment) Ordinance 1998. The concessionary deduction for home loan interest, which applies to the year of assessment 1998/99 and all subsequent years, is contained in sections 26E and 26F of the Inland Revenue Ordinance (IRO).

2. No distinction is drawn between residential properties acquired prior to the commencement of the concession on 1 April 1998 and those purchased subsequently. All residential properties rank equally in terms of the interest paid qualifying for the deduction. The maximum home loan interest deduction allowable in each year is \$100,000 except for the years of assessment 2001/02 and 2002/03 which was capped at \$150,000. The maximum year of entitlement was five years (whether continuous or not) initially, and was extended several times subsequently. With effect from the year of assessment 2017/18, the entitlement years for deduction have been extended to any 20 years of assessment.

HOME LOAN INTEREST

Conditions for deduction

3. Section 26E(1) provides that a home loan interest deduction is granted to any person who has paid interest on a mortgage loan obtained to purchase a dwelling if the dwelling was used by the person as the person's place of residence at any time during the year of assessment. The conditions for deduction of home loan interest are:

- (a) the interest is paid in the year of assessment;

- (b) the deduction is restricted to the amount of interest paid in the year;
- (c) the maximum deduction is:

| <u>Year of Assessment</u> | <u>Amount</u> |
|---------------------------|---------------|
| 1998/99 to 2000/01 | \$100,000 |
| 2001/02 and 2002/03 | \$150,000 |
| 2003/04 and after | \$100,000 |

- (d) the person claiming the deduction is the owner (i.e. either as a sole owner, a joint tenant or a tenant in common) of the dwelling;
- (e) if there is more than one owner, the maximum deduction is apportioned among the joint tenants in proportion to the number of the joint tenants or the tenants in common on the basis of their ownership as shown in the records of the Land Registry;
- (f) the dwelling is used by the person as the person's principal place of residence;
- (g) the dwelling is a separate rateable unit under the Rating Ordinance (Cap. 116) (i.e. it is a stand-alone unit situated in Hong Kong);
- (h) the loan is granted to finance the acquisition of the dwelling;
- (i) the loan is secured by a mortgage or charge over a Hong Kong property;
- (j) the lender is an approved body; and
- (k) the person has not been granted a deduction more than the entitlement years for deduction, whether continuous or not.

Interest paid in the year of assessment

4. Home loan interest deduction is only allowable for interest actually paid in the year of assessment. For the purposes of the deduction, whether the liability or any part of it, arose prior to or within the year of assessment is not a relevant consideration. So long as the payment is made within the year of assessment, subject to the other qualifying conditions being satisfied, the interest is deductible. Interest incurred in one year of assessment but not paid until the next year is only deductible in the year of payment.

Example 1

On 1 December 2018, Mr. A purchased a dwelling with a bank mortgage. Each of the monthly loan repayments, made on 2 January 2019, 1 February 2019, 1 March 2019 and 1 April 2019 respectively, included an interest component of \$10,000.

Deduction would be allowed in the following years of assessment:

| <u>Interest Payment Date</u> | <u>Year of Assessment</u> |
|------------------------------|---------------------------|
| 2 January 2019, | |
| 1 February 2019 and | 2018/19 |
| 1 March 2019 | |
| 1 April 2019 | 2019/20 |

Interest payment made on 1 April 2019, though related to interest incurred in the period from 1 March 2019 to 31 March 2019, would be allowed for deduction for the year of assessment 2019/20.

Deduction restricted to interest paid

5. Personal allowances are prescribed as fixed amounts which may be claimed by persons satisfying the relevant qualifying conditions for entitlement. Concessionary deductions, including home loan interest, differ from personal allowances. Subject to the maximum amount of deduction, persons are only entitled to deduct the amount actually paid. Persons claiming an amount in excess of the actual payment made in the year of assessment are subject to the

penalty provisions of the IRO on the same basis as any other persons making false or inflated claims.

Example 2

Miss B was the sole owner of a dwelling purchased in 2016. During the year ended 31 March 2019, she paid \$20,000 in mortgage interest on a bank loan obtained to finance the purchase.

Miss B's allowable deduction for the year of assessment 2018/19 would be limited to \$20,000 (i.e. the amount of the interest she paid in the year) even though the maximum amount of deduction was \$100,000.

Maximum deduction

6. Per section 26E(2)(a)(ii), the maximum home loan interest deduction cannot exceed the amount specified for the year of assessment in Schedule 3D. The maximum deduction is allowable to the owner(s) of property who paid interest during a year. Home loan interest expenses in excess of the statutory maximum deduction for any year will lapse. The excess interest paid cannot be carried forward and claimed as a deduction in any subsequent year of assessment.

Example 3

Mr. C was the sole owner of a dwelling purchased in 2016. He paid home loan interest of \$120,000 on his home mortgage during the year ended 31 March 2018. He was allowed a deduction of \$100,000 in his 2017/18 salaries tax assessment. During the year ended 31 March 2019, Mr. C paid \$80,000 in home loan interest.

Mr. C was only entitled to a deduction of \$80,000 for the year of assessment 2018/19. The excess interest of \$20,000 that was paid but not deductible for the year of assessment 2017/18 could not be carried forward and allowed as a deduction for the year of assessment 2018/19.

Ownership

Legal owner

7. Interest will be deductible under section 26E only if it is paid on a home loan. A “home loan” is defined in section 26E(9) as, among others, a loan of money which is applied wholly or partly for the acquisition of a dwelling which is held at any time during the year of assessment by the person as a sole owner, joint tenant or tenant in common. To be eligible to claim a deduction for home loan interest, the claimant must have legal ownership in the dwelling. In *D108/02 18 IRBRD 45*, the Board held that the word “owner” under section 26E does not include a beneficial owner. Similarly, in *D11/06 21 IRBRD 227*, the Board, after analysing the provisions of section 26E, stated that the section is concerned with legal, as opposed to beneficial, ownership in properties. In *D94/01 16 IRBRD 792*, the taxpayer divorced her husband and the court ordered her husband to transfer his interest in their dwelling to her but the assignment was only executed on a later date. The Board held that the taxpayer became the sole owner only when the interest of her husband in the property was assigned to her.

Sole owner

8. A person who owns a dwelling as a sole owner is, subject to the maximum deduction prescribed in Schedule 3D, entitled to claim in accordance with section 26E(2)(a) the whole of the interest paid during the year of assessment.

Joint tenants

9. If a dwelling is held by joint tenants, the home loan interest shall be regarded as having been paid under section 26E(2)(b)(i) by the joint tenants each in proportion to the number of the joint tenants (i.e. the home loan interest paid is deemed to have been paid by each of the joint tenants equally). In *D20/01 16 IRBRD 187*, the Board held that the taxpayer’s entitlement to the maximum amount of deduction specified in Schedule 3D was reduced in proportion to the number of joint tenants and not according to the beneficial interests of joint tenants or otherwise. It is not necessary to establish whether the joint tenants have contributed equally to the interest payments because this is not a relevant

consideration. Provided the interest has been paid by each of the joint tenants, it is sufficient for each of the joint tenants to claim interest in proportion to the number of joint tenants.

Example 4

Mr. D and his spouse were the joint owners of a dwelling that was used exclusively as their place of residence throughout the year of assessment 2018/19. Total mortgage interest paid by them during the year amounted to \$120,000.

Mr. D and his spouse, as joint tenants, were each entitled to claim a deduction for home loan interest. Since they were joint tenants, interest of \$60,000 (i.e. $\$120,000 \div 2$) was deemed under section 26E(2)(b)(i) to have been paid by each of them. The maximum deduction specified in Schedule 3D would be reduced in proportion to the number of the joint tenants (i.e. the \$100,000 maximum home loan interest deduction would apply on a “per property” basis and not on a “per person” basis). The maximum deduction allowed to each of them should be restricted to \$50,000 (i.e. $\$100,000 \div 2$).

Tenants in common

10. If a dwelling is held by tenants in common, the interest paid by each of the tenants in common is deemed under section 26E(2)(b)(ii) to have been paid by the tenants in common each in proportion to his or her share in the ownership in the dwelling. It is not necessary to establish whether the tenants in common have contributed to the interest payments in proportion to his or her share in the ownership because this is not a relevant consideration. Provided the interest has been paid by each of the tenants in common, it is sufficient for each of the tenants in common to claim their respective portions.

Example 5

Mr. E and Mr. F were tenants in common in a dwelling used exclusively as their place of residence. Their respective ownership shares were 1/4 and 3/4. The acquisition of the dwelling was financed

by a bank mortgage and the total interest paid by them during the year of assessment 2018/19 was \$120,000.

Since Mr. E and Mr. F were tenants in common, section 26E(2)(b)(ii) would deem 1/4 of the interest (i.e. $\$120,000 \times 1/4 = \$30,000$) to have been paid by Mr. E and 3/4 of the interest (i.e. $\$120,000 \times 3/4 = \$90,000$) to have been paid by Mr F. The total interest allowable to Mr. E and Mr. F would be capped at \$100,000. The respective amounts of home loan interest allowable to Mr. E and Mr. F should be \$25,000 and \$75,000 respectively.

11. As regards the application of section 26E, the following points in relation to ownership of properties should be noted:

- (a) Residential property owned by a limited company in which the person, who lives therein, is a shareholder does not qualify for the deduction because the person is only a tenant in a property owned by a third party. The dwelling must be legally owned and used by the person as the person's place of residence.
- (b) Where the beneficial ownership or part of the beneficial ownership in a dwelling passes, whether by operation of a will or under the Intestates' Estates Ordinance (Cap. 73), to a person (other than a joint tenant of the dwelling) because of the death of the legal owner, a deduction cannot be claimed for any home loan interest paid by either the administrator/executor of the estate or the person. The deduction for the home loan interest can only be claimed after the formal transfer of the title to the person.
- (c) Under the rules of survivorship, the ownership of a jointly owned property passes to the other joint tenants at the time of death of the deceased. The interest paid by the surviving joint tenants from that time onwards is deductible.
- (d) Where the purchase consideration of a dwelling is paid by instalments with interest and the dwelling is occupied by a person as a licensee before the property is assigned to the person,

deduction for home loan interest cannot be claimed as the person is not the legal or registered owner of the property before the conveyance is executed. See *D3/10* 25 IRBRD 162 and *D11/07* 22 IRBRD 300.

Maximum interest deduction

12. The maximum deduction applies to the dwelling as a whole and not to each of the individual owners. The maximum deduction allowable, as specified in Schedule 3D, is or is reduced as follows:

| Type of Ownership | Maximum Deduction |
|-------------------|--------------------------------------------------------------------------------------------------------------------|
| Sole owner | Full deduction, as per section 26E(2)(a)(ii), to the sole owner |
| Joint tenants | Reduced deduction, as per section 26E(2)(c)(i), on the basis of the number of joint tenants |
| Tenants in common | Reduced deduction, as per section 26E(2)(c)(ii), on the basis of individual share of ownership as tenant in common |

Example 6

| <u>Type of Ownership</u> | <u>Interest/ Share of Interest</u> | <u>Allowable Deduction</u> |
|--------------------------|------------------------------------|----------------------------|
|--------------------------|------------------------------------|----------------------------|

Sole owner - Example 3

| | | |
|-------|------------------|------------------|
| Mr. C | <u>\$120,000</u> | <u>\$100,000</u> |
|-------|------------------|------------------|

Joint tenants - Example 4

| | | |
|--------|------------------|------------------|
| Mr. D | 60,000 | 50,000 |
| Mrs. D | <u>60,000</u> | <u>50,000</u> |
| | <u>\$120,000</u> | <u>\$100,000</u> |

Tenants in common - Example 5

| | | |
|-------|------------------|------------------|
| Mr. E | 30,000 | 25,000 |
| Mr. F | <u>90,000</u> | <u>75,000</u> |
| | <u>\$120,000</u> | <u>\$100,000</u> |

Dwelling as a place of residence

Actually used as a place of residence

13. The dwelling in respect of which the interest is paid must have been used by the person wholly or partly as a place of residence during the period in which the payment was made. Properties under construction without the issue of an occupation permit or certificate of compliance cannot be used as a place of residence. See D63/05 20 IRBRD 908. The earliest date on which a property can become a person's place of residence is the date on which the occupation permit or certificate of compliance is issued. The date on which a property becomes a person's place of residence is, however, a matter of fact and will principally be determined by the date on which the person begins to reside in the premises. Interest paid subsequent to the issue of the occupation permit but prior to the person taking up actual residence cannot be claimed as home loan interest because the property has not yet become the person's place of residence.

Example 7

On 1 December 2018, Mr. G obtained a mortgage to finance the acquisition cost of a property under construction. He paid \$80,000 in interest between 1 December 2018 and 31 March 2019. The occupation permit of the property was issued on 1 March 2019 and the property was assigned to Mr. G on 31 March 2019. Mr. G took up residence on 1 April 2019.

No home loan interest deduction would be allowable for the interest paid up to 31 March 2019 because at no time during the year of assessment 2018/19 was the property used by Mr. G as his place of residence. Interest paid from 1 April 2019 would qualify for the deduction.

Partly used as a place of residence

14. The full amount of the interest paid by a person on a home loan is, subject to the statutory limit, only deductible when the dwelling is used exclusively by the person as a place of residence for the whole year. In any other situation, a deduction is only allowed under section 26E(2)(a)(i)(B) for an

amount that is reasonable in the circumstances. For example, if a person lets out one half of the person's dwelling for the whole year of assessment, only one half of the interest expense would be allowable as a deduction under section 26E. If the rental income received is assessable to property tax, the interest attributable to the rental income would be deductible under personal assessment.

Example 8

Miss H was the sole owner of her dwelling which was financed by a bank mortgage. She let out half of the property during the whole of the year of assessment 2018/19. In the same period, she paid \$120,000 in mortgage interest.

Interest of \$60,000 (i.e. $\$120,000 \div 2$) would be allowed to Miss H as home loan interest under section 26E. Interest of \$60,000, if having been incurred in the production of rental income, would be allowed for deduction under personal assessment, if applicable.

Wholly used as a place of residence for part year

15. The maximum deduction for the home loan interest is not apportioned on a time basis. A person does not need to own a place of residence for the full year to be entitled to the maximum deduction. If the person only owned and used the dwelling as a place of residence for part of the year but, nevertheless, paid interest in excess of the amount prescribed in Schedule 3D, a deduction would be granted for the full amount paid, but not in excess of the maximum allowable deduction.

Example 9

Ms. I paid home loan interest of \$80,000 between 1 April 2018 and 31 December 2018. She sold her flat on 31 December 2018.

Home loan interest of \$80,000 paid would be fully allowed for deduction for the year of assessment 2018/19.

Example 10

Until 30 June 2018, Mr. J resided in accommodation provided by his employer. On 1 July 2018, he purchased a flat and occupied it as his place of residence. From 1 July 2018 to 31 March 2019, he paid home loan interest of \$150,000.

Mr. J would be allowed deduction of \$100,000 as home loan interest for the year of assessment 2018/19.

Example 11

Between 1 April 2018 and 30 June 2018, Ms. K lived in a dwelling acquired in 2010. She paid \$30,000 in interest on her home loan. On 1 July 2018, she sold the dwelling. Until 30 September 2018, Ms. K lived in rented accommodation. On 1 October 2018 she commenced to reside in a newly built flat. Ms. K paid \$60,000 in home loan interest from 1 October 2018 to 31 March 2019.

Home loan interest of \$90,000 (i.e. \$30,000 + \$60,000) would be allowed for deduction for the year of assessment 2018/19.

Change of place of residence

16. The term “place of residence” is defined in section 26E(9). In relation to a person who has more than one residence, it means the person’s principal place of residence. It is not unusual for a person to change homes in the course of a year of assessment by selling one home and purchasing another. Therefore, at different times within the same year of assessment, a person may have different principal places of residence. Home loan interest paid in respect of each principal place of residence of the person is deductible under section 26E. It is not possible for a person to have more than one principal place of residence at the same time. Where the periods of ownership of two properties overlap and the person is paying interest on two properties at the same time, the interest paid on the respective properties is only deductible for the respective periods when they were used as the person’s principal place of residence. The facts of individual cases will determine the date on which a property ceased to be the

principal place of residence and the other property became the principal place of residence.

Example 12

Between 1 April 2018 and 30 June 2018, Mr. L lived in a flat that he acquired in 2010. On 1 July 2018, he moved into a newly completed flat but was unable to sell his former residence until 30 September 2018. He paid \$7,000 per month in interest on his former residence during the period from 1 April 2018 to 30 September 2018 and further \$72,000 in interest on the loan for his new residence from 1 July 2018 to 31 March 2019.

If the newly acquired property became the principal place of residence on 1 July 2018, Mr. L would only be entitled to claim interest paid on his former residence up to 30 June 2018. His home loan interest deduction for the year of assessment 2018/19 would be \$93,000 (i.e. $\$7,000 \times 3 + \$72,000$).

Principal place of residence

Matter of fact and degree

17. A home loan interest deduction is only allowable for interest paid in respect of a person's principal place of residence. In *D108/02 18 IRBRD 45*, the Board stated that although merely sleeping on the premises was not conclusive of residence, the residence of a person was by implication that person's home, where at least the person had a sleeping apartment or shared one. The question of whether a dwelling is a person's place of residence is essentially one of fact and degree. Other than the situation of a person moving residences, a person may own more than one property used as a residence during a year of assessment (e.g. a flat located in the urban area and a house on an outlying island). At different, mutually exclusive, periods within the year of assessment, the person could use the dwellings as the principal place of residence. The home loan interest deduction would be allowed for each property for the respective period that the relevant property was used as the person's principal place of residence. It is not accepted that a person could, at frequent and regular intervals, alternate two properties as a principal place of residence (e.g. by claiming an urban property to be a principal

place of residence on weekdays and the house on the outlying island as a principal place of residence on weekends).

18. In cases of owning more than one place of residence, the home in which a person and the person's family spend the majority of their time will invariably be taken as the principal place of residence. Any dwelling used as a residence predominantly at weekends and for holidays would, in all but the most exceptional circumstances, be regarded as a holiday home. Holiday homes and the like, notwithstanding that they may be used as a place of residence, are unlikely the principal place of residence. As a consequence, a person who may have fully repaid a loan obtained to finance the acquisition of the principal place of residence but still has an outstanding mortgage on another home (i.e. secondary home), cannot be allowed a deduction for home loan interest because the secondary home does not satisfy the "principal place of residence" requirement.

Employer-provided accommodation

19. An employee may be required to occupy staff quarters at a prescribed location for operational reasons related to employment (e.g. staff of government departments). At the same time, the employee's spouse and family members continue to reside in another property as the family home, in which the employee lives when the employee is not required to reside in the employer-provided quarters for operational reasons. Under such or similar circumstances, the employee's family home, and not the employer-provided quarters, is the employee's principal place of residence.

Married couple's principal place of residence

20. "Marriage" is defined in section 2(1) of the IRO to mean:

- (a) any marriage recognized by the law of Hong Kong; or
- (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so.

The definition of "marriage" shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a person and any

spouse other than the principal spouse. If a person has more than one legal spouse under the laws of other places which permit polygamous marriage, only the marriage between the person and the principal spouse is recognized for the purposes of the IRO.

21. In section 2(1) of the IRO, “spouse” is defined to mean a husband or wife whereas “husband” and “wife” refer to a married man and married woman respectively. Based on the above definitions, “marriage” was in the past construed as a heterosexual marriage between a man and a woman and parties in a same-sex marriage would be incapable of having a “spouse”.

22. In *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, the Court of Final Appeal (CFA) recognized that the protection of the institution of marriage in Hong Kong, being heterosexual and monogamous, was a legitimate aim. However, the differential treatment under the IRO between a person in a heterosexual marriage and a person in a same-sex marriage entered into outside Hong Kong was not rationally connected to the legitimate aim and was not justified. As a relief, the CFA considered that a remedial interpretation of the IRO was appropriate and ordered the following declaration:

- (a) the existing limb (b) of the term “marriage” in section 2 of the IRO shall be read as “any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, provided where the persons are of the same sex and such a marriage between them would have been a marriage under this Ordinance but for the fact only that they are persons of the same sex, they shall be deemed for the purposes of such a marriage to have the capacity to do so”; and
- (b) for the purposes of the IRO, references to:
 - (i) “husband and wife” shall be read as “a married person and his or her spouse”;
 - (ii) “not being a wife living apart from her husband” shall be read as “not being a spouse living apart from the married person”; and

(iii) “either the husband or wife” shall be read as “either the married person or his or her spouse”.

23. A married couple, whether in a heterosexual marriage or same-sex marriage, who are not living apart from each other, should always have the same principal place of residence. The married couple cannot claim that two different homes concurrently owned by each of them are both principal places of residence. They are not entitled to home loan interest deductions in respect of different properties which they own separately. The facts of individual cases will determine which dwelling is the principal place of residence of the married couple and the interest paid on that dwelling will be deductible to its owner. The other spouse will not be entitled to any deduction for home loan interest for the same period.

Place of residence for year of marriage and separation/divorce

24. A married couple may be separated in circumstances such that divorce proceedings are either in progress or likely to be instituted within a reasonable time. In such situations, the married couple are likely to be living apart from each other and will have different principal places of residence. Each may be allowed a deduction for home loan interest in respect of the interest attributable to their respective principal places of residence subsequent to the date of their separation or divorce.

25. In a year of marriage, separation or divorce, the married couple may each claim a deduction in respect of different principal places of residence used at different times in the same year of assessment. The respective periods within that year when a person concerned is single, married or living apart from the spouse are treated separately when determining the entitlement to the deduction. A person living in the person’s own home before marriage and moving to the spouse’s residence upon marriage is entitled to a deduction for home loan interest up to the day immediately before the person moves to the spouse’s residence, subject to the maximum interest deduction.

Example 13

Mr. M married Ms. N on 1 July 2018. Prior to their marriage, Mr. M resided in a flat owned by him as a tenant in common with two other persons. The flat was purchased in 2010 and Mr. M's share in the ownership was 1/3. Ms. N lived in rented accommodation. After their marriage, both Mr. M and Ms. N resided in Ms. N's flat until 31 December 2018. On 1 January 2019, Mr. M and Ms. N started to live in a dwelling that they acquired in September 2018 as joint tenants. Mr. M's share of the interest paid on his former residence between 1 April 2018 and 30 June 2018 was \$30,000. The interest paid by Mr. M and Ms. N between 1 January 2019 and 31 March 2019 was \$90,000 (i.e. \$45,000 each).

For the year of assessment 2018/19, Mr. M would be entitled to a deduction of \$75,000 (\$30,000 + \$45,000) and Ms. N would be entitled to a deduction of \$45,000.

Example 14

Mr. O married Ms. P on 1 July 2018. Prior to their marriage, Mr. O and Ms. P were each the sole owner of their residences purchased in 2015 and 2016 respectively. Upon marriage, Ms. P moved into Mr. O's residence. The flat, however, remained registered in the name of Mr. O as sole owner. Between 1 April 2018 and 30 June 2018, Mr. O paid \$60,000 in home loan interest and Ms. P paid \$90,000 in home loan interest. Between 1 July 2018 and 31 March 2019, Mr. O paid a further \$180,000 in home loan interest.

For the year of assessment 2018/19, Mr. O would be entitled to a home loan interest deduction of \$100,000 and Ms. P would be entitled to a deduction of \$90,000.

26. The tax treatment in relation to the year of marriage applies equally to a year of separation or divorce. Whilst the dates of marriage and divorce are a matter of record, the date of separation (which is the more relevant date for determining the date when a married couple began living apart from each other) will need to be determined from the facts on a case by case basis. Of necessity,

the onus must rest with the taxpayers concerned to provide adequate evidence of the date of separation.

Example 15

Mr. Q and Mrs. Q lived together in their jointly owned residence until 30 September 2018. On 1 October 2018, they separated and Mr. Q moved to rented accommodation. Under the Deed of Separation, legal ownership of the home was vested in Mrs. Q on 1 October 2018. The mortgage liability was taken up by Mrs. Q on the same day. The interest paid on the mortgage up to 30 September 2018 was \$80,000. Mrs. Q paid a further \$80,000 in interest between 1 October 2018 and 31 March 2019.

Mr. Q would be entitled to a deduction for the interest of \$40,000 (i.e. $\$80,000 \div 2$) paid by him for the year of assessment 2018/19. Mrs. Q paid interest of \$120,000 (i.e. $\$40,000 + \$80,000$) but her deduction would be limited to \$100,000.

Leaving Hong Kong for extended periods

27. Under salaries tax, a person is not required to be resident in Hong Kong before he is entitled to claim concessionary deductions and personal allowances. Nevertheless, the home loan interest deduction would not be allowable to a person who has left Hong Kong on a permanent basis (e.g. emigration to establish a home elsewhere). Subsequent to emigration, the dwelling located in Hong Kong will no longer be the person's principal place of residence. Situations will arise where a person leaves Hong Kong for an extended period. These include employment-related overseas postings where the person will return to Hong Kong at the end of the posting even though the overseas posting is for an extended period. If the dwelling in Hong Kong is retained as a residence with the intention that it would continue to be used as a residence upon the person's return to Hong Kong, it would be regarded as the person's principal place of residence.

Rateable unit

28. To qualify for the deduction, the dwelling must be subject to the Rating Ordinance. The Rating Ordinance only applies to buildings located in Hong Kong and the deduction is therefore only available in respect of dwellings situated in Hong Kong. In addition to defining a “dwelling” as being a building or part of a building designed and constructed for use exclusively or partly for residential purpose (i.e. industrial and commercial buildings excluded), the dwelling must have its rateable value separately estimated under the Rating Ordinance. Areas within dwellings that are not rated on a stand-alone basis (e.g. rooms located within) cannot, in their own right, satisfy the definition of dwelling.

Home loan

29. Under section 26E(9), a home loan means a loan of money that is applied wholly or partly for the purchase of a dwelling used at any time in the year of assessment as the person’s place of residence. If the home loan was applied wholly and exclusively for financing the purchase of the residence, then all of the interest paid would qualify as home loan interest. Where the loan is not applied solely for the acquisition of the residence, section 26E(3)(a) provides that the deduction allowable to the person should be such part of the amount of the home loan interest paid as is reasonable in the circumstances of the case. As a general rule, when a loan has not been wholly applied for financing the acquisition of the residence, the deductible portion of the interest paid would be calculated by apportioning the total interest paid in the same ratio as that in which the funds were applied to qualifying and non-qualifying purposes. If, however, a person is able to satisfy the Commissioner that this apportionment basis is not equitable in his or her particular circumstances, the Commissioner would consider an alternative basis proposed by the person. The onus of establishing that the alternative basis proposed is more equitable remains with the person.

Example 16

Mr. R purchased a dwelling exclusively used as his place of residence on 1 April 2018. A mortgage loan of \$4,000,000 was obtained and \$2,000,000 put towards the purchase of the dwelling. The remaining

\$2,000,000 was on-lent to another person. The total interest paid in the year ended 31 March 2019 was \$100,000.

As only one half of the loan was applied for financing the purchase of the dwelling, the home loan interest deduction to Mr. R for the year of assessment 2018/19 would be restricted to 1/2 of the total interest paid (i.e. \$50,000). In future years of assessment, the interest attributable to the loan on-lent to other person would not be deductible and apportionment of interest deduction would be required.

30. Notwithstanding that a loan may originally have been obtained for the purchase of a dwelling (i.e. for qualifying purpose), any subsequent re-grant of the loan or increase in the principal amount that is not applied for a qualifying purpose cannot be regarded as a home loan. The application of the additional funds obtained for a qualifying purpose (i.e. to repay the original home loan) will be the sole determinant of deductibility of the interest paid on the loan re-granted. Where a home loan is re-drawn subsequent to repayment of all or part of the original loan, or an extension of the original loan amount is obtained, and the funds are applied for non-qualifying purposes, no deduction is allowable for the interest paid on that part of the loan applied for non-qualifying purposes.

Example 17

Ms. S wholly owns a dwelling which was exclusively used as her place of residence throughout the year of assessment 2018/19. The dwelling was acquired in 2006 by a mortgage loan which was fully repaid in 2017/18. On 1 April 2018, Ms. S mortgaged the dwelling again to obtain a loan and applied the proceeds to purchase quoted shares. In the year ended 31 March 2019, the interest paid on the loan was \$100,000.

The funds obtained on 1 April 2018 were not applied for the acquisition of Ms. S's dwelling. The interest paid would not be deductible as home loan interest.

31. However, if a re-mortgaged loan is partly used to repay the original loan which was obtained for the purchase of a dwelling, the portion of the interest paid, in proportion to the outstanding balance of the original loan, is deductible.

Example 18

Mr. T obtained a mortgage loan of \$4,000,000 for the purchase of a dwelling which was exclusively used as his place of residence. On 1 April 2018, Mr. T obtained a new mortgage loan of \$2,000,000 and used part of it to repay the outstanding balance of \$800,000 of the original loan. Mr. T continued to reside in the dwelling and paid interest of \$50,000 for the year of assessment 2018/19.

Mr. T would be entitled to a home loan interest deduction of \$20,000 (i.e. $\$50,000 \times \$800,000 \div \$2,000,000$) for the year of assessment 2018/19.

32. Under the Government Home Ownership Scheme, a person may purchase a dwelling at a price below market value but subject to a restriction on alienation. The restriction on alienation can be removed by paying a premium to the Housing Authority. A loan obtained to pay the premium is not applied for the acquisition of the dwelling but for the purpose of removing the restriction on alienation. The loan, hence, is not a home loan and the interest paid under the loan cannot be deducted. See *D2/01 16 IRBRD 121*.

33. Any home loan must be secured by a mortgage or a legal charge over a property in Hong Kong. If the lender does not have a mortgage or a legal charge over a property in Hong Kong, the borrower is not entitled to a deduction for the interest. If a mortgage or legal charge is only registered at some time after the granting of the loan, only interest paid from the date of registration of the mortgage or charge is deductible.

34. The home loan interest deduction is not confined to interest attributable to one home loan only. When a person obtains a down-payment loan from one source, say his or her employer in addition to a loan from a bank, provided that the down-payment loan is secured by a charge or mortgage over a Hong Kong property, the interest on the down-payment loan is also deductible.

35. Banks and financial institutions may levy charges for late payment of instalment or early repayment of the loan. These charges are not interest and cannot be deducted under section 26E.

Entitlement years for deduction

36. A person can be allowed a deduction for home loan interest for a prescribed number of entitlement years. Section 26E(4)(c) allows the years of assessment in which the deduction is granted not to be in consecutive years. The maximum year of entitlement was five years initially, and lengthened to seven years since the year of assessment 2003/04, and extended to 10 years since the year of assessment 2005/06. The entitlement years for deduction had been extended to any 15 years of assessment since the year of assessment 2012/13 under the Inland Revenue (Amendment) Ordinance 2012. After the enactment of the Inland Revenue (Amendment) Ordinance 2017, since the year of assessment 2017/18, the entitlement years for deduction have been further extended to any 20 years of assessment. The extensions of entitlement years for home loan interest deduction under the two amendment ordinances only apply to prospective years of assessment and do not apply to the years of assessment prior to the enactment of these amendment ordinances. Section 26E(4)(d) provides that for those persons who cannot be allowed home loan interest in a year of assessment due to exhaustion of entitlement years in accordance with the prevailing law, they are not entitled to home loan interest deduction for that year of assessment notwithstanding the extension of the entitlement years in the subsequent years.

37. Subject to the provisions for revocation of a claim for the deduction, once a deduction for any amount of home loan interest has been taken into account in a year of assessment in determining a person's net chargeable income or income chargeable to tax under personal assessment, the person shall be deemed to have been allowed the deduction for that year of assessment, which will be counted against the person's entitlement years.

Car parking spaces

38. The home loan interest deduction also applies in relation to interest incurred on the acquisition of car parking spaces. Provided that the home loan obtained in respect of a dwelling was applied also for the acquisition of the car

parking spaces, these car parking spaces are deemed under section 26E(8) to be part and parcel of the dwelling and used in the same manner and to the same extent by a person as the residence itself is used as the person's dwelling.

Revocation of claims

39. The Commissioner will notify each claimant that the deduction for home loan interest has been allowed if the home loan interest has been taken into account in determining the net chargeable income of the claimant. For the person who is issued a notice of assessment, the issue date of the notice of assessment will be the date on which notification of allowance of the deduction is given. For any person whose income is not subject to tax, a written notice of allowance of the deduction will be given. A person may withdraw his or her claim for home loan interest deduction under section 26E(6). According to section 26E(6)(a), written notice of revocation of the deduction must be given by the person within six months after the date on which the deduction was allowed. The six-month period for revocation begins to run from the date of the notification that the deduction has been allowed. If a person revokes his or her claim after six years from the expiration of the year of assessment to which the claim relates, section 26E(6A) empowers the assessor to make additional assessment, within two years after such revocation.

40. Section 26E(6)(b) provides that when a claim for home loan interest deduction is revoked, the claim is deemed not to have been made. The year of assessment to which the revocation relates will not count as one of the years of assessment in which the person had claimed the deduction for home loan interest.

Specified bodies and recognized organizations or associations

41. Only interest paid to specified bodies and recognized organizations or associations as set out in section 26E(9) could be allowed as a deduction for home loan interest. Specified bodies are the Government, financial institutions (i.e. defined as authorized institutions within the meaning of section 2 of the Banking Ordinance or associates of such authorized institutions), registered credit unions, licensed money lenders, the Hong Kong Housing Society and a person's employer. Recognized organizations or associations are organizations or associations recognized by the Commissioner.

42. The Commissioner may approve an organization as a recognized organization or association for the purposes of the home loan interest deduction under section 26E(7). The basic criterion for approval of an organization or association which does not fall within the six prescribed categories of bodies is that the loan arrangements made by the organization and the borrowers must be on an arm's length basis. Any organization or association in which a person or the person's family or relatives (or those of the person's spouse) hold any direct or indirect financial interest is unlikely to be approved unless in the most exceptional circumstances. Applications for approval as a recognized organization or association should be directed to:

Assistant Commissioner, Unit 2
Inland Revenue Department
G.P.O. Box 132
Hong Kong

43. Any person wishing to know whether a specific organization or association has been approved as a lender for the purposes of section 26E(9) may make enquiries directly with his or her assessor. In the enquiry, the full name and address of the lender must be provided.

Property transfers intended to obtain a tax benefit

44. The anti-avoidance provisions of section 61A empower the Commissioner to disregard or reconstruct transactions that are entered into for the sole or dominant purpose of enabling a person to obtain a tax benefit, having regard to the seven matters specified in section 61A(1). Transactions involving the transfer of ownership or partial ownership of property between spouses for a consideration financed by borrowed funds will be subject to detailed examination. Where it is concluded that the sole or predominant purpose for the transfer of the property is to obtain a tax benefit, the deduction for home loan interest will be denied.

NOMINATION OF SPOUSE TO CLAIM DEDUCTION

General rules for nomination

45. A person may be entitled to a deduction for home loan interest under section 26E but have no income chargeable to tax against which to claim the deduction. To cater for such situations, section 26F(1) allows a person without income to nominate the person's spouse to claim the deduction to which the person is entitled. Section 26F(2)(a) provides that when a spouse is nominated to claim the deduction for a particular year of assessment, the person making the nomination forgoes his or her entitlement to the deduction in favour of the nominated spouse who may claim it. If a person has more than one legal spouse under the laws of other places which permit polygamous marriage, only the nomination made by the principal spouse will be accepted. Nominations for a spouse to claim a person's entitlement to home loan interest must be made on a year by year basis. According to section 26F(2)(b), if a nomination was made and allowed, the person making the nomination is regarded as having been allowed the deduction under section 26E for that year of assessment.

Revocation of nomination

46. Upon allowing the deduction for home loan interest to the nominated spouse, the Commissioner will give written notification to the person making the nomination that the deduction has been allowed under section 26F(3). A nomination for a spouse to claim a deduction may be revoked by the person who made it within six months after the date of the notification by the Commissioner that the deduction has been allowed. Once a nomination has been revoked, it is deemed under section 26F(4)(b) that the claim for home loan interest deduction has not been made and the number of remaining years of entitlement to the home loan interest deduction for the person revoking the deduction is restored to its position prior to the nomination being made for that year.

PROCESSING DEDUCTION CLAIM

Illustrative examples

Salaries tax

47. If a person's income from employment exceeds the aggregate of personal allowances and total deductions (including home loan interest deduction) for a year, the person will be issued a notice of salaries tax assessment with home loan interest deduction allowed and the person is deemed to have claimed the deduction for the year.

Example 19

For the year of assessment 2018/19, Mr. U had salary income of \$300,000. He claimed home loan interest deduction of \$100,000 in respect of his solely owned property.

| | \$ | \$ |
|-------------------------------------------|----------------|----------------|
| Salary income | | 300,000 |
| <u>Less:</u> Home loan interest deduction | 100,000 | |
| Basic allowance | <u>132,000</u> | <u>232,000</u> |
| Net chargeable income | | <u>68,000</u> |

In the notice of salaries tax assessment issued, Mr. U would be advised of the home loan interest deduction allowed for the year of assessment 2018/19.

48. If a person's income from employment exceeds the personal allowances and deductions other than home loan interest deduction but is less than the aggregate of allowances and total deductions (including home loan interest deduction) for a year, the person will not be issued any notice of salaries tax assessment but the person is deemed to have claimed the deduction for the year.

Example 20

In the year of assessment 2018/19, Mr. V had salary income of \$160,000. He claimed home loan interest deduction of \$50,000 in

respect of his solely owned property and approved charitable donations of \$10,000.

| | \$ | \$ |
|-------------------------------------|----------------|----------------|
| Salary income | | 160,000 |
| Less: Approved charitable donations | 10,000 | |
| Home loan interest deduction | 50,000 | |
| Basic allowance | <u>132,000</u> | <u>192,000</u> |
| Net chargeable income | | <u>0</u> |

No notice of salaries tax assessment would be issued to Mr. V but the deduction for home loan interest would be deemed to have been allowed to Mr. V. The excess of Mr. V's deductions and allowances over his income could not be carried forward to future years of assessment. Mr. V would be advised that the home loan interest had been deducted in arriving at his net chargeable income (which was equal to nil) for the year of assessment 2018/19.

49. If a person's income from employment is less than personal allowances for a year, no notice of salaries tax assessment will be issued and the person is not regarded as having claimed home loan interest deduction for the year.

Example 21

In the year of assessment 2018/19, Miss W, who was unmarried, had salary income of \$90,000. She claimed home loan interest deduction of \$20,000 in respect of her solely owned property.

| | \$ | \$ |
|------------------------------------|----------------|----------------|
| Salary income | | 90,000 |
| Less: Home loan interest deduction | 20,000 | |
| Basic allowance | <u>132,000</u> | <u>152,000</u> |
| Net chargeable income | | <u>0</u> |

Miss W's income was less than her personal allowance. She would not be charged to salaries tax even without deducting any home loan interest. Miss W would not be regarded as having been allowed a home loan interest deduction for the year of assessment 2018/19.

50. For a married couple, if the income from employment of each spouse exceeds the aggregate of the spouse's personal allowances and total deductions (including home loan interest deduction) for a year, each spouse will be issued a notice of salaries tax assessment with home loan interest deduction allowed and the married couple are deemed to have claimed the deduction for the year.

Example 22

In the year of assessment 2018/19, Mr. X and Mrs. X had salary income of \$300,000 and \$200,000 respectively. Each of them claimed home loan interest deduction of \$80,000 in respect of their jointly owned property.

| | <u>Mr. X</u> | <u>Mrs. X</u> |
|-------------------------------------------|----------------|----------------|
| | \$ | \$ |
| Income from employment | 300,000 | 200,000 |
| <u>Less:</u> Home loan interest deduction | 50,000 | 50,000 |
| Basic allowance | <u>132,000</u> | <u>182,000</u> |
| Net chargeable income | <u>118,000</u> | <u>18,000</u> |

Home loan interest deductions given respectively to Mr. X and Mrs. X would be restricted to the reduced maximum deduction. Each of them would be issued a notice of salaries tax assessment showing their net chargeable incomes. Mr. X and Mrs. X would be advised of the home loan interest deduction allowed for the year of assessment 2018/19.

51. For joint assessment, if a spouse is not liable to salaries tax (i.e. the spouse's income from employment is less than the aggregate of personal allowances and total deductions, including home loan interest deduction), the other spouse liable to salaries tax will be issued a notice of salaries tax assessment with home loan interest deduction. The spouse not liable to salaries tax will not be issued any notice of salaries tax assessment but is deemed to have claimed the deduction for the year.

Example 23

In the year of assessment 2018/19, Mr. Y and Mrs. Y had salary income of \$500,000 and \$140,000 respectively. Mrs. Y claimed home

loan interest deduction of \$70,000 in respect of her solely owned property. Mr. Y and Mrs. Y elected under section 10(2) to be jointly assessed for salaries tax.

| | \$ | \$ |
|-------------------------------------------|----------------|----------------|
| Salary income of Mr. Y | | 500,000 |
| Salary income of Mrs. Y | | <u>140,000</u> |
| Aggregated assessable income | | 640,000 |
| <u>Less:</u> Home loan interest deduction | 70,000 | |
| Married person's allowance | <u>264,000</u> | <u>334,000</u> |
| Aggregated net chargeable income | | <u>306,000</u> |

Mr. Y would be issued a notice of salaries tax assessment but Mrs. Y would not be issued any notice of salaries tax assessment. Deduction for home loan interest would be deemed to have been allowed to Mrs. Y as the home loan interest was deducted in arriving at the aggregated net chargeable income of Mr. Y and Mrs. Y under salaries tax. Mrs. Y would be advised of the home loan interest deduction allowed for the year of assessment 2018/19.

Personal assessment

52. If the total income of a person, who elects for personal assessment, exceeds the aggregate of personal allowances and total deductions (including home loan interest), the person will be issued a notice of personal assessment with home loan interest deduction allowed and the person is deemed to have claimed the deduction for the year.

Example 24

In the year of assessment 2018/19, Mr. Z had assessable profits of \$300,000. He elected for personal assessment, and claimed home loan interest deduction of \$180,000 in respect of his solely owned property.

| | \$ | \$ |
|---------------------------------|----------------|----------------|
| Assessable profits | | 300,000 |
| <u>Less:</u> Home loan interest | 100,000 | |
| Basic allowance | <u>132,000</u> | <u>232,000</u> |
| Net chargeable income | | <u>68,000</u> |

Home loan interest deduction allowed to Mr. Z would be restricted to the maximum deduction of \$100,000. In the notice of personal assessment issued, Mr. Z would be advised of the home loan interest deduction allowed for the year of assessment 2018/19.

53. For personal assessment elected by a married couple under section 41(1A), if the married couple are liable to tax under personal assessment (i.e. the total income exceeds the total deductions, including home loan interest deduction), each of the married couple will be issued a notice of personal assessment with home loan interest deduction allowed. The spouse who made the home loan interest deduction claim is deemed to have claimed the deduction for the year.

Example 25

In the year of assessment 2018/19, Mr. A had salary income of \$300,000 while Mrs. A had assessable profits of \$150,000. Mrs. A claimed for deduction of home loan interest of \$90,000 in respect of her solely owned property. They jointly elected for personal assessment under section 41(1A).

| | <u>Mr. A</u> | <u>Mrs. A</u> | <u>Total</u> |
|-----------------------------------------|--------------|----------------|----------------|
| | \$ | \$ | \$ |
| Salary income | 300,000 | - | 300,000 |
| Assessable profits | <u>-</u> | <u>150,000</u> | <u>150,000</u> |
| | 300,000 | 150,000 | 450,000 |
| <u>Less:</u> Home loan interest | <u>-</u> | <u>90,000</u> | <u>90,000</u> |
| | 300,000 | 60,000 | 360,000 |
| <u>Less:</u> Married person's allowance | | | <u>264,000</u> |
| Net chargeable income | | | <u>96,000</u> |

Each of Mr. A and Mrs. A would be issued a notice of personal assessment. Mrs. A would be advised of the home loan interest deductions allowed for the year of assessment 2018/19.

54. For personal assessment elected by a married couple under section 41(1A), if one spouse is not liable to tax under personal assessment (i.e. the spouse's income is less than the total deductions, including home loan interest deduction, and adjusted loss from business), the other spouse liable to tax will

be issued a notice of personal assessment with home loan interest deduction allowed. The spouse not liable to tax is deemed to have claimed the deduction for the year.

Example 26

In the year of assessment 2018/19, Mr. B had salary income of \$340,000 while Mrs. B had property income (i.e. net assessable value) of \$50,000. Mrs. B also had an adjusted loss of \$30,000. Mrs. B claimed for deduction of home loan interest of \$90,000 in respect of her solely owned property. Mr. B and Mrs. B jointly elected for personal assessment under section 41(1A).

| | <u>Mr. B</u> | <u>Mrs. B</u> | <u>Total</u> |
|---------------------------------------------------------------------|-----------------|-----------------|-----------------|
| | \$ | \$ | \$ |
| Salary income | 340,000 | - | 340,000 |
| Property income | <u>-</u> | <u>50,000</u> | <u>50,000</u> |
| | 340,000 | 50,000 | 390,000 |
| <u>Less:</u> Home loan interest | <u>-</u> | <u>90,000</u> | <u>90,000</u> |
| | 340,000 | (40,000) | 300,000 |
| | <u>-</u> | <u>(30,000)</u> | <u>(30,000)</u> |
| Loss for the year | | | |
| Net total income/(net loss and unused home loan interest deduction) | 340,000 | (70,000) | 270,000 |
| Unused home loan interest deduction transferred (from)/to spouse | (40,000) | 40,000 | 0 |
| Net loss transferred (from)/to spouse | <u>(30,000)</u> | <u>30,000</u> | <u>0</u> |
| | <u>270,000</u> | <u>0</u> | <u>270,000</u> |
| <u>Less:</u> Married person's allowance | | | <u>264,000</u> |
| Net chargeable income | | | <u>6,000</u> |

The excess of Mrs. B's loan interest and adjusted loss would be set off against the income of Mr. B. Mr. B would be issued a notice of personal assessment showing his net chargeable income. Mrs. B, who was not liable to tax, would be advised that the home loan interest deduction had been allowed for the year of assessment 2018/19.

55. For personal assessment elected by a married couple under section 41(1A), if the married couple are not liable to tax under personal assessment (i.e. the aggregated total incomes are less than the aggregate of personal allowances,

total deductions and loss) but would have been liable if the loss and home loan interest had not been deducted, the married couple will not be issued any notice of personal assessment but are deemed to have claimed the deduction for the year.

Example 27

In the year of assessment 2018/19, Mr. C had salary income of \$300,000 while Mrs. C had property income (i.e. net assessable value) of \$50,000. Mrs. C also had an adjusted loss of \$500,000. Mrs. C claimed for deduction of home loan interest of \$90,000 in respect of her solely owned property. Mr. C and Mrs. C elected for personal assessment under section 41(1A).

| | <u>Mr. C</u> | <u>Mrs. C</u> | <u>Total</u> |
|---------------------------------------------------------------------------------|------------------|------------------|------------------|
| | \$ | \$ | \$ |
| Salary income | 300,000 | - | 300,000 |
| Property income | <u>-</u> | <u>50,000</u> | <u>50,000</u> |
| | 300,000 | 50,000 | 350,000 |
| <u>Less:</u> Home loan interest | <u>-</u> | <u>90,000</u> | <u>90,000</u> |
| | 300,000 | (40,000) | 260,000 |
| Loss for the year | <u>-</u> | <u>(500,000)</u> | <u>(500,000)</u> |
| Net total income/(net loss and unused home loan interest deduction) | 300,000 | (540,000) | (240,000) |
| Unused home loan interest deduction transferred (from)/to spouse ^(a) | (40,000) | 40,000 | 0 |
| Net loss transferred (from)/to spouse ^(b) | <u>(260,000)</u> | <u>260,000</u> | <u>0</u> |
| Reduced total income/ (loss carried forward) | <u>0</u> | <u>(240,000)</u> | <u>(240,000)</u> |

Statement of loss issued to Mrs. C

| | |
|-------------------------------------------------------------------|----------------|
| Loss for year | 500,000 |
| <u>Less:</u> Amount set off against Mr. C's income ^(b) | <u>260,000</u> |
| Loss carried forward ^(c) | <u>240,000</u> |

Notes

- (a) The excess of Mrs. C's home loan interest of \$40,000 which was not used to set off against Mrs. C's income (i.e. \$90,000 - \$50,000) would be used to set off against Mr. C's income.

Mrs. C's home loan interest would be set off in the following orders:

| | |
|-----------------------------------------------------------|-----------------|
| - against Mrs. C's total income | \$50,000 |
| - against Mr. C's total income under section 42(5)(a)(ii) | <u>\$40,000</u> |

\$90,000

(b) Mr. C's income, after deducting the balance of the home loan interest claimed by Mrs. C, would be set off by Mrs. C's loss of \$500,000, but would be restricted to the net total income of Mr. C.

(c) The balance of the loss which was not used to set off against Mr. C's income would be carried forward for setting off against Mrs. C's income in subsequent years of assessment.

No notice of personal assessment would be issued to Mr. C and Mrs. C but the home loan interest would be deemed to have been allowed. Mrs. C would be advised that the home loan interest had been deducted in arriving at the total net chargeable income of Mr. C and Mrs. C (which was equal to nil).