



TC01502

Appeal number: TC/2010/08412

Income Tax – interest paid on overdrawn account to fund company’s borrowings – whether eligible for relief against assessments to income tax on interest reimbursed by company – no – s 353(3) ICTA 1988

FIRST-TIER TRIBUNAL

TAX

MR WILLIAM GREEN

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)
MR BARRACLOUGH (MEMBER)**

Sitting in public at Leeds on 19 May 2011

Mr J Wine Chartered Accountant and Ms J Ferris for the Appellant who did not attend

Mr Alan Hall, HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr William Green against a refusal of claims for tax relief for interest paid against assessments of income tax on interest received from Greens Park and Leisure Homes Limited for the years 2003/04 to 2005/06.

2. The appeal relates to the following assessments

Year	Tax on SATR	Increase	Total amount for year	Date issued	Type
2003/04	5,224.71	2,064.27	7,288.98	24/3/10	Assessment
2004/05	36.51	14,590.87	14,627.38	24/3/10	Assessment
2005/06	44,053.02	13,662.35	57,715.37	24/3/10	Assessment

3. The question for our determination is whether a claim made pursuant to s 353(1) ICTA 1988 for relief in respect of bank interest paid by Mr Green to Lloyds TSB Bank Plc on a personal overdraft account should be allowed against the assessments.

4. Mr Green did not attend the hearing but was represented by Mr J Wine, Chartered Accountant, who was assisted by Ms J Ferris. Mr Alan Hall appeared for HMRC.

5. The bundle of documents produced to the Tribunal included the following :-

- i) relevant legislation
- ii) the assessments under appeal
- iii) a copy of the exchange of correspondence between the taxpayer's agent and HMRC
- iv) Mr Green's appeal to the Tribunal
- v) Mr Green's statement of case
- vi) HMRC's statement of case
- vii) Case law authority

6. The background to the case is that Mr Green and his wife Mitzi Anne Green owned land at Fryston Lane, Pontefract, West Yorkshire which accommodated a dilapidated and rundown caravan site. Mr and Mrs Green decided to clear the site and develop it for the rental and sale of retirement and mobile homes to be known as Oakland Hill Park Home Estate.

7. The company William Greens and Sons Limited (subsequently renamed Greens Park and Leisure Homes Limited) was formed by Mr and Mrs Green on 25 June 2002 for the purposes of undertaking the development of the site and future trading activities.

8. The development of the site and installation of its infrastructure, including utilities, roadways, drainage and bases for the new mobile homes, was estimated to cost approximately £1,000,000.

5 9. In June 2004 Lloyds TSB Bank Plc offered Mr and Mrs Green a personal overdraft facility of £1,045,000. The bank's offer of overdraft facilities included "any other account that may be opened as a replacement or substitution for it".

10 10. Mr and Mrs Green informed the bank that, at some stage, it was their intention to transfer the overdraft borrowings into the name of the company. This would have involved a transfer to the company of the development site by Mr and Mrs Green (failing which Mr and Mrs Green would have been in contravention of s 330 of the Companies Act 1985 in that the company would be borrowing to improve assets of a director of the company). In the interim the bank required a joint and several guarantee from Mr and Mrs Green, together with a debenture from the company and a chattel mortgage to allow the bank to lend against the value of the mobile homes. The bank already held a legal charge over a number of different freehold properties owned by Mr and Mrs Green personally, and the copy correspondence from Lloyds TSB Bank Plc produced to the Tribunal clearly indicates that Mr and Mrs Green preferred to retain the freehold ownership of the development site and the various other properties in their ownership which provided security for their existing borrowings with the bank.

25 11. The overdraft facility was therefore provided to Mr and Mrs Green personally rather than the company. Their intention was to provide the necessary funding for the company to develop the site and be reimbursed the interest they paid to the bank. Copy bank statements produced to the Tribunal showed that at the time the facility was made available in June 2004, Mr and Mrs Green's personal bank account (referred to as a 'corporate current account') was £963,858 overdrawn. It is not clear from the statements to what extent the overdraft may have been made up of the ongoing development costs of Oakland Hill Estate or personal expenditure by Mr and Mrs Green.

30 12. Self-assessment tax returns were submitted by Mr Green including details of interest received from the company as follows : -

2003/04	28/01/05	£175
2004/05	20/12/05	£135
2005/06	31/01/07	£ 96

35 13. During the year ended 30 June 2005 the accounts of Greens Park and Leisure Homes Limited disclosed that "*during the year the company paid interest totalling £128,464 to the director Mr W Green in respect of working capital loans provided to the company*". The company had not withheld tax from the interest payments and had not accounted for any deduction via the C61 procedure. HMRC accordingly issued assessments under Schedule 16 ICTA 1988 to the company in respect of its obligation to deduct and account for income tax on interest payments to Mr Green.

14. Mr Green says that the £128,464 paid to him in 2005 was a reimbursement by the company of overdraft interest paid personally by himself and his wife in respect of the working capital they provided for the company to pay for its development of Oakland Hill Estate.

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15. HMRC say that the monies Mr Green received from the company as interest should have been shown on his personal tax return along with a corresponding credit for the tax deducted.

10 16. Assessments were raised by HMRC on Mr Green in respect of the interest payments omitted from his tax return. Income tax of 20% already assessed under Schedule 16 on Greens Park and Leisure Homes Limited was allowed as a credit against the assessment on Mr Green. The effect of this was that Mr Green was liable to income tax on the difference between the basic and higher rates of income tax.

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17. Mr Vine on behalf of Mr Green accepts that interest paid to Mr Green by the company should have been shown on the self-assessment tax return, but argues that in determining any tax due under s 353(1) ICTA 1988 relief should be granted in respect of the interest he paid to the bank on his personal overdraft account “thereby reducing the interest received from the company to nil”. He argues that tax relief is available on loan interest and that the overdraft account represented a qualifying loan for business purposes.

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18. HMRC say that the borrowing was by way of overdraft and relief under s 353 cannot be given in respect of interest on a debt incurred by overdrawing an account. Section 353(3) ICTA 1988 states that :

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‘(3) Relief under this section shall not be given in respect of
(a) Interest on a debt incurred by overdrawing an account ...’

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The interest received by Mr Green for the years in question is summarised as follows :

Year	Originally declared	Omitted	Credit for tax
2003/04	175	25,328	5,066
2004/05	135	107,511	21,502
2005/06	96	64,182	12,836

19. Mr Wine argues that HMRC’s Business Income Manual BIM 45695, states that ‘many businesses operate accounts with overdraft facilities where all banking transactions are put through a single account ... In these circumstances the interest is an allowable deduction.’ He also argues that it is recognised principle that an individual is entitled to relief in respect of interest paid on a loan which is used in lending monies to a company and which is wholly and exclusively for the purposes of the business of the company or any other associated company.

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20. HMRC contend, firstly, that it was Mr and Mrs Green who borrowed the money from the bank and not the company and secondly that the borrowing was by way of

overdraft, not a loan. HMRC therefore contend that interest is specifically ineligible for relief under s 353(3).

5 21. HMRC referred to the case of *Lawson (HM Inspector of Taxes) v Brooks [1992] STC 76* where the taxpayer had conceded that no relief could be claimed for interest on the overdrawn balances of current accounts but that it was also decided by the court that where those overdrawn balances were consolidated and transferred to a loan account the interest on that loan account was also ineligible for relief.

10 22. Mr Wine acknowledged that a mistake had been made in setting up the borrowing in the personal names of Mr and Mrs Green but argues that there was always an intention to transfer the overdraft borrowings to a loan account in the company's name. He says that the bank's overdraft offer specifically stated that the facility was not personal to Mr Green and his wife but also for '*any other account that may be*
15 *opened as a replacement or substitution for it ..*'. He submits that the amount of interest received by Mr Green was directly referable to and of the same amount as the interest paid to the bank. He said Mr Green had not profited from the arrangement and that the interest received by him patently reflected the borrowings of the company, which at some stage was to be transferred to a more permanent loan account in its
20 name.

23. At the time Mr and Mrs Green were offered overdraft facilities by Lloyds TSB Bank Plc there was clearly a substantial existing overdraft, part of which may or may not have related to the borrowings of the company. In any event, the borrowing was
25 by way of overdraft in respect of which interest is specifically ineligible for relief under s 353(3). The fact that Mr and Mrs Green intended to transfer the borrowing to the company is not relevant. Plainly had Mr and Mrs Green set up the initial borrowing in the name of the company, relief would have been granted to the company in respect of interest payments on its borrowings. Whilst the Tribunal has
30 sympathy for Mr and Mrs Green, its decision has to be based on the facts as they existed and not on what they may or may not have intended. For these reasons therefore the appeal does not succeed and the assessments referred to in paragraph 2 of this decision are confirmed.

35 24. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
40 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Michael S Connell
TRIBUNAL JUDGE

45 **RELEASE DATE: 11 October 2011**