



TC03420

Appeal number: TC/2013/02096

INCOME TAX – overseas property purchase using borrowed funds – whether an “offset mortgage” – whether interest income on escrow account chargeable under Part 4 ITTOIA 2005 – whether relieved under Part 8 ITTOIA 2005 – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RUTH THOMAS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN N. DENT
MS SUSAN STOTT**

Sitting in public at Manchester on 11th February 2014

The Appellant did not attend

Mr Jones, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant did not attend the Tribunal. The Tribunal, having been satisfied
5 that the Appellant had been given notice of the hearing, felt able, bearing in mind
Rule 2 of the Tribunal Rules, to proceed to make a decision in the absence of the
Appellant. Having heard Mr Phillip Jones, Officer of Her Majesty's Revenue and
Customs for the Respondents, and having read all the papers in the bundle,

2. The Tribunal decided that the appeal against the Assessments raised by
10 HMRC in the sum of £3,296.00 for the year 2008-2009 (as amended at Tribunal in
accordance with the Statement of Case sent to the Appellant) and £2,200.00 for the
year 2009-2010 is dismissed and the Assessments are confirmed.

Background

3. In September 2006 Mrs Thomas entered into a contract to purchase a residential
15 property ("the Property") in Cyprus "off plan" – that is, the Property was not then
constructed but the vendor developer undertook to construct and deliver the Property.
To fund the purchase Mrs Thomas paid a substantial deposit of £20,000. The deposit
comprised 20% of the purchase price and the balance was to be funded by a loan
agreement ("the Loan Agreement") with Alpha Bank Cyprus Limited. The Property
20 purchase price was in Cypriot Pounds, so Alpha Bank immediately swapped the
deposit into Cypriot Pounds and placed those Cypriot Pounds into a deposit account
("the Escrow Account") in the name of Mrs Thomas. The Escrow Account converted
into Euros when Cyprus entered the Eurozone in January 2008. All the relevant
documentation was executed by a Cypriot lawyer acting under a Power of Attorney
25 conferred by Mrs Thomas. The plan was that funds would be released to the
developer against certificates of value as the development proceeded. In fact, although
the Property has never progressed beyond a shell and the developer appears now to be
insolvent (having mortgaged the site for its own borrowings), most of the contents of
the Escrow Account have already been passed to the developer. Mrs Thomas, along
30 with other dissatisfied purchasers is in litigation in the Cyprus courts with both the
developer and Alpha Bank. The background to this unsatisfactory arrangement is fully
set out in Mrs Thomas' affidavit within the papers

4. In 2011 the Respondents ("HMRC") opened an enquiry into Mrs Thomas' tax
35 affairs, prompted by information received that Mrs Thomas had not returned certain
deposit interest income. The dispute that comes before this Tribunal concerns the
interest that was credited to the Escrow Account in the tax years 2008-09 to 2009-10.
HMRC have issued discovery assessments to tax that interest on Mrs Thomas. The
detailed arguments of the parties are set out below but in essence HMRC maintain
40 that the interest credited to the Escrow Account is taxable income of Mrs Thomas,
while Mrs Thomas argues that as she has never received any of the funds in the
Escrow Account she cannot be liable to tax on those sums, and that she never gave
permission for a bank account to be opened in this way.

5. This case is on all fours with a decision by Judge Kempster in *Coxon v HMRC [2013] UKFTT 112 (TC)* a copy of which was provided to Mrs Thomas with the bundle. The relevant Statutory Provisions and Evidence are identical to that case, the submissions of Mrs Thomas could be set out no better than they were elaborated in that case on behalf of Mr Coxon and no purpose is served in reciting them in this decision.

HMRC's Submissions

6. Mr Jones had pointed out in the case outline sent to Mrs Thomas that HMRC had assessed an additional £1174 for the year 2008-09, but that bank statements suggested a further receipt in that year of £2122. We were asked to include that further amount in the Assessment for that year. Mrs Thomas was not present at the Tribunal, but the Tribunal accepted that she had been notified of the error in calculation, and agreed to amend the Assessment to £3296. The Assessment for the year 2009-10 was for an additional amount of £2200. This remained unchanged from the case outline.

7. Whilst HMRC were accepted that it had been a difficult time for Mrs Thomas, and that she was unhappy with the conduct of Alpha Bank. HMRC could not get involved with this, and were looking at what had happened and its taxation consequences. Their submissions were similar to those in *Coxon*.

Consideration and Conclusions

8. We treated this appeal as if all three grounds of appeal set out in *Coxon* had been advanced in this case, and for the reasons set out in Judge Kempster's Decision came to the same conclusion and found against Mrs Thomas.

9. We considered the point raised by Mrs Thomas that she had never given permission for Alpha Bank to open an account in this way. It was clear that she had appointed a Cypriot lawyer to act under a Power of Attorney, and that the Bank had acted under instructions from this Attorney. The Tribunal cannot act as arbiter to determine whether this was done correctly, as it would be under Cypriot law. All that the Tribunal can do is to look at the facts. An account was opened by Mrs Thomas and she was the recipient of interest in that account. For the reasons set out in *Coxon* tax is payable on that interest

Decision

10. For the reasons set out above we disallowed the appeal and confirmed the Assessments as amended

11. 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

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

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**JOHN N. DENT
TRIBUNAL JUDGE**

RELEASE DATE: 17 March 2014

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