TAX FOR THE Owner-Manager

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Paragraph 12(1)(x) and the Taxation of Incentive and Inducement Payments

In *Ritchie v. The Queen* (2018 TCC 113), the issue in dispute was the tax treatment of certain signing bonuses reported on the appellant's personal tax return. The facts of the case were relatively straightforward. The appellant rented land that he owned to his corporation, which farmed the land on his behalf. In 2007, Enbridge Pipelines Inc. was engaged in a project to install pipelines across Alberta, Saskatchewan, and Manitoba. The appellant's land was situated on the pipeline route that Enbridge was building.

In 2008, pursuant to a settlement agreement between the appellant and Enbridge, the appellant received funds totalling $441,595 from Enbridge. The funds represented payments in respect of the granting of easements, disturbance damages, insurance, temporary workspace rights, and most importantly a signing bonus. The appellant's corporation reported the money received in respect of the insurance, disturbance damages, and temporary workspace as income; the appellant reported money received in respect of an easement and the signing bonus as a capital receipt.

The minister reassessed the appellant on the basis that the signing bonus was income to the appellant and not a capital receipt. The minister argued (1) that the signing bonus was paid in the course of the appellant's farming business and did not relate to the disposition of capital property; and (2) that even if the signing bonus was not received as part of the farming business, it was includible under paragraph 12(1)(x) as an incentive or inducement for the early signing of the settlement agreement and that the exclusion in subparagraph 12(1)(x)(viii) did not apply because the payment was an inducement granted in consideration of a contractual obligation. The appellant argued that the signing bonus was a non-taxable windfall or, in the alternative, a capital receipt.

The TCC first turned to the minister's argument that the signing bonus was received as part of the appellant's farming business. It rejected this argument, holding that the appellant's corporation and not the appellant carried on the farming business; thus, the signing bonus was not received as income from the appellant's business because the appellant did not carry on a farming business.

The court then turned to the application of paragraph 12(1)(x), which in general terms includes in income amounts received as inducements. D'Arcy J rejected the application of paragraph 12(1)(x) because of the exclusion in subparagraph 12(1)(x)(viii), which applies when the inducement—in this case, the signing bonus—may reasonably be considered "to be a payment made in respect of the acquisition by the payer . . . of an interest in the taxpayer . . . or an interest in . . . the taxpayer's property." The TCC then turned to the question whether the signing bonus was in respect of Enbridge's acquisition of an interest in the appellant's land (the easement).

D'Arcy J cited *Nowegijick v. The Queen* (1983 CanLII 18 (SCC)), in which the SCC held that the words "in respect of"

> are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to," "with reference to" or "in connection with." The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

The TCC noted that Enbridge had paid the signing bonus as an incentive for the early granting of the easement. Thus, it was paid in connection with the appellant's granting of the easement, and therefore in respect of the acquisition of an interest in the appellant's property. Consequently, because of the exclusion in subparagraph 12(1)(x)(viii), the signing bonus was not taxable under paragraph 12(1)(x).

The TCC also held that because the signing bonus was in respect of a disposition by the appellant of a capital asset—namely, an interest in land—it was a capital receipt to the appellant. Further, the signing bonus was part of the proceeds of disposition of an interest in land, and Enbridge had agreed to pay a higher sale price for the easement if it was granted before a certain date. As a result, the TCC allowed the appeal and held that the signing bonus must be included for the purpose of determining the appellant's capital gain under subsection 39(1) from the disposition of an interest in land. The TCC rejected the appellant's contention that the signing bonus was a non-taxable windfall because that argument was based on facts that were not before the court.

This case does not break new law. However, it is a helpful reminder to practitioners that when one is dealing with a payment whose character is arguably ambiguous, it may be advantageous to document the underlying transaction that gives rise to the payment in a way that clearly reflects the character that results in the desired tax treatment.

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