

Docket: 2018-3073(IT)G

BETWEEN:

LLOYD WARREN MURPHY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on September 29, 2022 at Vancouver, British Columbia.

The Honourable Justice Réal Favreau

For the Appellant :

The Appellant himself

Counsel for the Respondent :

Cindy Mah

JUDGMENT

The appeal from an assessment made by the Minister of National Revenue dated June 7, 2017 pursuant to section 160 of the *Income Tax Act* in respect of dividends paid to the appellant by a corporation of which he was a controlling shareholder, is dismissed with costs, in accordance with the attached reasons for judgment.

Signed at Quebec, Quebec, this 11th day of October 2022.

“Réal Favreau”

Justice Favreau

Citation: 2022 TCC 111
Date: 20221011
Docket: 2018-3073(IT)G

BETWEEN:

LLOYD WARREN MURPHY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from an assessment made by the Minister of National Revenue (the “Minister”) dated June 7, 2017 pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the “Act”) in respect of dividends paid by 591985 British Columbia Ltd. (the “Corporation”) to the Appellant in December 2015 at a time when the Corporation had a tax liability.

[2] In general terms, section 160 of the *Act* allows the Minister to assess a particular person (the “transferee”) for all or a portion of the unpaid tax debt of another person (the “tax debtor”), if the tax debtor transfers property to the transferee at a time they are not dealing at arm’s length with each other.

[3] In this case, the transfer of property was in the form of dividends in the amounts of \$140,500 to the Appellant (the “transfer”) and of \$1,000 to the Murphy Family Trust both declared by a written resolution of the sole director of the Corporation dated December 21, 2015. At that time, the Appellant was the sole director and the controlling shareholder of the Corporation.

[4] At the time of the transfer, the Corporation had a tax liability which on June 7, 2017 was in the amount of 109,460.96 (the “amount of the tax liability”) representing the total federal and provincial tax plus accrued interest to that date.

[5] The issue to be decided is whether the Appellant is jointly and severally liable for the amount of \$109,460.96 owing by the Corporation pursuant to section 160 of the *Act*.

[6] The Appellant's argument is that the dividends that were paid to him were in consideration for services provided to the Corporation as an individual licensed insolvency trustee.

[7] At the hearing, the Appellant explained that the Corporation had a wholly-owned subsidiary in the name of LW Murphy Ltd. ("LWM") which owned and operated a public accounting firm. By way of a Management Agreement dated September 10, 1999 between the Corporation and LWM, the Corporation was engaged to provide management services to LWM which services were in fact provided by the Appellant.

[8] The Appellant argues that the dividends were paid to him personally in order to retain his services and that the transfer of dividends was for consideration. According to the Appellant, in today's business world, dividends are a legitimate and valid form of remuneration for executives, key personnel and principals of a company.

[9] Subsections 160(1) and (2) of the *Act* states as follows:

160(1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

- (a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,
- (b) a person who was under 18 years of age, or
- (c) a person with whom the person was not dealing at arm's length,

the following rules apply;

(d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted for it, and

(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section, and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

[10] Subsection 160(1) contemplates conditions that must be satisfied for that section to apply. In this case, there is no dispute with respect to the following:

- (a) that the Corporation had a liability under the *Act* that remains unpaid;
- (b) that the Corporation transferred property, in the form of dividends, to the Appellant at the time that the Corporation had a tax debt outstanding; and,
- (c) that the Corporation and Appellant were not dealing at arm's length.

[11] At all material times, the Appellant controlled the Corporation, and as such he is deemed not to be dealing at arm's length with the Corporation pursuant to subparagraph 251(2)(b)(i) and paragraph 251(1)(a) of the *Act*.

[12] The dispute in this case concerns whether the Appellant provided consideration for the property transferred to him by the Corporation and, if so, whether the fair market value of that consideration exceeded the fair market value of the property transferred to him by the Corporation.

[13] In *Neuman v. Minister of National Revenue*, [1998] 1 S.C.R. 770, the Supreme Court of Canada held that a dividend is related to shareholding and not to

any other consideration the shareholder might have provided. This position was upheld by this Court in a more recent decision of *Valovic v. The Queen*, 2020 TCC 101.

[14] On many occasions, this Court has rejected the argument that consideration may be given for dividends including in the context of section 160 of the *Act* (please refer to *Côte v. R.*, 2003 D.T.C. 813, *Valovic* cited above and *Pauzé v. R.*, 1998 (CarswellNat 2757).

[15] The fact that the Appellant declared the dividends on his personal income tax return and paid taxes on them does not impact the fact that dividends are not payment for services.

[16] The declaration of a dividend is, in corporate law, an allocation of a company's undistributed profits to its shareholders and does not depend on the conduct of a given shareholder.

[17] In this case, no consideration was given by the Appellant for the dividends. Accordingly, the Appellant is jointly and severally liable for the amount of tax liability pursuant to subsection 160(1) of the *Act*.

[18] For the foregoing reasons, the appeal must be dismissed with costs.

Signed at Quebec, Quebec, this 11th day of October 2022.

“Réal Favreau”

Favreau J.

CITATION: 2022 TCC 111

COURT FILE NO.: 2018-3073(IT)G

STYLE OF CAUSE: LLOYD WARREN MURPHY AND HIS
MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 29, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: October 11, 2022

APPEARANCES:

For the Appellant::	The Appellant himself
Counsel for the Respondent:	Cindy Mah

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: François Daigle
Deputy Attorney General of Canada
Ottawa, Canada