



CESTNICK

TAX MATTERS

Don't get stuck with someone else's tax bill

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Some people aren't good with surprises. Consider Michelle Myers of Buckeye, Ariz. She suffers from serious headaches, and on three occasions has awakened from her headaches with a different foreign accent – which usually lasts a week or so. But an occurrence in 2016 left her with a British accent that she still had as recently as a year ago. She's been diagnosed with foreign accent syndrome, a rare condition that usually accompanies a neurological event, such as a stroke. "I feel like a different person," Ms. Myers told ABC affiliate KNXV-TV. "Everybody only sees or hears Mary Poppins."

More recently, a few Canadians have awakened to a different type of surprise: Facing a tax bill that belongs to someone else. You see, Section 160 of our tax law can cause you to be liable for the tax bill of someone else who is related to you, or not dealing with you at arm's length, if you receive a gift of assets from that person at a time when they owe the taxman money. You'll avoid the tax liability to the extent you actually pay

fair market value for the assets you receive.

In January and February of this year there was a flurry of court cases dealing with Section 160, which are worth reviewing to understand the gist of how the law works.

THE CASES

Scott v. the Queen (2020 TCC 4): This case involved two brothers, J and D. Brother D was indebted to the Canada Revenue Agency for \$126,603 plus interest. During this time, he transferred funds to brother J totalling \$224,500. The taxman applied Section 160 of our tax law and reassessed brother J for the amount owing by brother D.

Brother J argued that the amounts received by him were not gifts, but loans, and therefore didn't constitute a transfer of property from brother D to J. The judge disagreed with this based on the evidence. It's clear, however, that

there are situations where a bona fide loan that bears interest could allow the transferee to avoid Section 160 and the ugly tax bill.

Muir v. the Queen (2020 TCC 8): This case involves a dentist, M, and her corporation. M sold her dental practice and the proceeds of the sale were received by the corporation. The corporation then transferred \$124,000 to M. Although M was unaware that the corporation would owe tax for the year in question, this was the case.

The CRA applied Section 160 to make M personally liable for the corporation's taxes. As it turns out, M had taken the \$124,000 from her corporation simply to make it easier to pay off debts of the corporation itself. By assuming the debts of the corporation, M did in effect pay fair market value for the \$124,000 transferred to her. The CRA lost in court.

Dreger et al v. the Queen (2020 TCC 25): In this case, two daughters each inherited \$96,641 representing their share of their late father's life income fund (LIF). The two had been the named beneficiaries under the LIF. As a result of his death, their father owed taxes of not less than \$96,641. The CRA reassessed each of the daughters for the amount of \$96,641 since each of them was "jointly and severally, or solidarily" liable, under Section 160, for the tax amount owing by their father. If one of the daughters couldn't make payment, the other would be liable for the full amount. The daughters lost this case and were on the hook for the taxes owing.

White v. the Queen (2020 TCC 22): In this case, spouse A transferred funds to

a joint bank account held with spouse T at a time when spouse A owed the taxman \$49,962 in income taxes (plus another \$90,886 in GST). Spouse A argued that there was no transfer to spouse T since the funds went into a joint bank account. While this was true enough, spouse T eventually made withdrawals from the joint account for personal purposes, and so the judge concluded that Section 160 should apply, and spouse T became liable for the tax bill of spouse A up to the amount of the withdrawals made by spouse T.

Similar to these cases, the directors of a corporation could be on the hook for GST/HST owing by the corporation to the taxman. During the COVID-19 pandemic, many businesses are struggling with cash flow. It's easy to make the decision to pay suppliers, for example, rather than paying GST/HST owing to the taxman, particularly since the CRA has extended the deadline for remitting these amounts to June 30 for any GST/HST payments that became owing on or after March 27, and before June 1. The risk, of course, is that the business can't afford to make its GST/HST remittances, leaving directors on the hook.

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