



The Federal Court of Appeal Reinstates a GST Assessment

In the January/February 2007 issue of *Ontario Dentist*, I commented on two 2006 Tax Court of Canada decisions, one of which was *1524994 Ontario Ltd. v The Queen* ("How to Reduce Your Tax Burden"). Subsequent to the publication of this article, the Federal Court of Appeal (the "FCA") released its decision allowing the Canada Revenue Agency's (the "CRA's") appeal in this case. The FCA reinstated the GST assessment against the respondent numbered company (the "Corporation").

The Corporation had entered into a written agreement (the "Agreement") with two doctors and an audiologist (the sole shareholder of the Corporation) for the purpose of obtaining the benefit of OHIP coverage for patients of the audiology clinic (the "Clinic") managed by the Corporation. Under the Agreement, the Corporation made taxable supplies of leasing premises and equipment and of providing consulting or management services to the two doctors so that the doctors could conduct their audiology services business at the Clinic. The parties intended for the Agreement to comply with all the basic criteria for OHIP coverage, namely:


1. the audiologist would provide his services as an employee of physicians licensed in Ontario;
2. the audiologist would perform his services in premises and with equipment leased by the doctors;
3. the physicians would establish and supervise appropriate standards of patient care at the Clinic; and
4. the physicians would interpret the results of the completed audiology tests.

In the FCA's view, the Agreement established the legal relationship by which the parties voluntarily chose to govern themselves and should be respected (in the absence of a sham). For authority for this clear legal principle, the FCA referred to the Supreme Court of Canada's income tax jurisprudence.

While the parties had established their legal relationships and transactions under the Agreement for the purpose of ensuring OHIP coverage, they cannot then come before the courts to argue that the CRA should disregard the Agreement and re-characterize those

relationships and transactions to suit another purpose (i.e. to avoid a GST assessment). Once so established, the tax consequences under the Agreement flow from these underlying legal realities. If the parties conduct their activities in a manner for one purpose, they do so for all purposes. The Corporation cannot tell OHIP that the parties are conducting business one way to suit a particular objective, then tell the CRA that they are conducting business in a different manner to avoid a GST assessment. To do so, in the FCA's view, would be "on its face offensive".

Despite the Corporation's opportunistic attempt to redefine the doctors' role as merely acting as billing agents, who did not actually receive any taxable supplies of leased premises and equipment or services from the Corporation, the FCA found that the parties abided by the terms of the Agreement. In fact, the two doctors issued T4 income tax slips to the audiologist for his wages earned as their employee. Accounting books and records reflected the nature of the transactions outlined in the Agreement. Of course, of particular concern to the FCA, the parties represented to OHIP that they carried on business in a manner consistent with the Agreement.

As discussed above, the FCA decision reinforces legal principles established by certain Supreme Court of Canada income tax jurisprudence. ***In determining tax consequences, the legal form of transactions and relationships among parties matters.*** When entering into written agreements, parties direct their minds to how they wish to transact their business relations. Their activities should reflect the nature of the transactions set out in their agreements. When the parties' activities are carried out in a manner consistent with their underlying agreements, the tax rules will apply to those transactions described in the agreements. By following these principles, taxpayers can achieve greater certainty in tax planning and minimize their tax costs. 

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