

Clearwater Seafoods Holdings Trust v The Queen, 2012 TCC 186

Who Gets to Continue an Appeal after a Plan of Arrangement

[Clearwater Seafoods v The Queen, 2012 TCC 186](#)

The issue here was whether a corporation that purchased the assets and liabilities of an income trust was able to become the appellant in an appeal commenced by the income trust prior to the implementation of the plan of arrangement.

The Income trust initiated an appeal in respect of an assessment that increased the tax payable by the trust. After the appeal was filed, the trust was involved in a plan of arrangement, the purpose of which was to convert the trust to a corporation. The plan of arrangement stated that after the assets and liabilities passed to the corporation, "the trust will be dissolved in accordance with the applicable law and the [Trust's] Declaration of Trust".

The Court concluded that a corporation assuming the tax liability of a trust as part of a plan of arrangement does not thereby gain the trust's objection/appeal rights. Neither the ITA nor the common law allow for the assignment of the tax obligation in a manner that is binding on the Minister.

Before the court could apply section 29 of the *Tax Court of Canada Rules (General Procedure)*, the successor corporation must be found to have transmitted its liability in respect to the subject matter under appeal via "assignment, bankruptcy, death or other means" (para 15). The court considered that under the ITA the person who earns income is the taxpayer in respect of the income, and is liable to pay income tax the moment the income is earned. It is this taxpayer who is assessed under s 152, and who has the right to file a notice of objection under s165. The court noted that there are no provisions in the ITA that allow the appeal rights to be assigned. Counsel for the appellant conceded that they relied on s 88.1 to transfer assets of the trust, and that this section incorporates the winding up provisions of subsection 88(1). Thus, the assignment/assumption of any potential tax debt did not result in the acquisition of rights the rights of appeal. The court then looked at the common law and stated that an agreement by which one party assumes another's tax liability is not binding on the Minister (para 29). The court noted that at common law, a party may assign his contractual benefits, but not his obligations (without the consent of the party to whom the obligation is owed). Thus, even though the corporation now had the legal obligation, as between itself and the trust, to pay any income tax debt of the Trust, this doesn't change the fact that this debt is owed by the trust to the Crown, AND the assignment/assumption of such debt doesn't transfer to the corporation the Trust's rights of appeal in respect of the assessment of the Minister.