

ABIL Loan to Shareholder or Corporation? - Sas Ansari

Author : admin

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[*Barnwell v Canada*, 2016 FCA 150](#)

The taxpayer appealed from a decision of the Tax Court of Canada ([2015 TCC 98](#)) finding that the loan subject to the Allowable Business Investment Loss claim was made to the individual and not the Corporation.

A long time acquaintance of the taxpayer incorporated a business and the taxpayer provided funding. No formal agreement was concluded.

This case highlights the need for business persons and investors to obtain professional advice to ensure that the arrangements and outcomes are what are assumed or expected.

ANALYSIS

The *Income Tax Act* allows a taxpayer to deduct one-half of Allowable Business Investment Losses in the year (ITA 39(1)(c)(iv)) on the basis that the debt is owed by a Canadian Controlled Private Corporation (CCPC).

The FCA agreed with the TCC, on the basis of both the documentary and oral evidence presented at trial, that the debt was owed by the individual shareholder and not the corporation. The factors were:

- Cheques made out to individual and not corporation;
- Promissory notes were from individual not corporation;
- Taxpayer's journal described loans as being to individual;
- Majority of cheques deposited in personal bank account; and
- Debtor understood loans to be to him personally.

- Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 &3

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