

Capital Cost Allowance Limit Leasing Business - Sas Ansari

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Capital Cost Allowance Limit: Leasing Business OR Income From Property?

[Thibeault v The Queen, 2015 TCC 271](#)

At issue was whether the revenue from the Taxpayer's activities was income from a leasing business or income from property, and therefore whether the limit in *ITA Regulations* 1100(15) applied to limit the Capital Cost Allowance (CCA) deductible to net leasing revenues.

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ANALYSIS

The [Income Tax Act](#) does not permit a deduction for capital costs (s 18(1)(b)) other than when calculating income from business or property, in which case such part of the cost as allowed by the regulations is deductible (s 20(1)(a)).

In the [ITA Regulations](#), subsection 1100(1) sets out the permissible deductions for purposes of [ITA](#) 20(1)(a), while 1100(15) limits the total deduction for property that is "leasing property" to net revenues from the lease of that property.

"Leasing property" is defined in [ITA Regulations](#) 1100(17) as depreciable property (with some exceptions) used primarily to earn gross revenue consisting of rent, royalty, or leasing revenue.

The definition of rent is expanded by 1100(17.2) to include gross revenue from (i) the right to use or occupy property, and (ii) services ancillary to use or occupation of a person of the said property. This extended definition does not apply where the individual uses the property in a business operated where the person supervises the business personally and continuously (1100(17.3(b))).

The issue, therefore, was whether the individual has a source of income that is a business or property as per the test set out in [Stewart v Canada, 2002 SCC 46](#).

The Federal Court of Appeal in *Oke v Canada*, [2010 FCA 350](#), considered the concept of operating a business in subsection 1100(17.3) of the [ITA Regulations](#). The following principles were set out in distinguishing between income from business or property where the revenue generated is by allowing access or use of property:

- Business income is distinguished from property income on the basis of the level of

activity in earning revenues by the taxpayer; *Wertman v. M.N.R.*, [1964] C.T.C. 252, 64 D.T.C. 5158 (Ex. Ct.); *Walsh v. M.N.R.*, [1965] C.T.C. 478, 65 D.T.C. 5293 (Ex. Ct.); *Burri v. The Queen*, [1985] 2 C.T.C. 42, 85 D.T.C. 5287 (F.C.T.D.) – and the case [Canadian Marconi Co. v. The Queen](#), [1986] 2 S.C.R. 522.

- The level of activity, to render a source of income business and not property, must be one that goes beyond that which customarily relate to the rental or use of that particular property;

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