

Change in Residence - Effect on Loss Deductions

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Zhu v The Queen, [2015 TCC 16](#)

At issue was the deductibility of losses incurred by an individual on the sale of property (shares) after he ceased being a Canadian resident.

FACTS

The Appellant was the CEO of a company and received stock options as part of his compensation package. After he ceased being the CEO of the company he also left Canada and ceased to be a Canadian resident.

He then exercised his stock options, which resulted in an inclusion in income (half included by operation of ITA 110(1)(d)). However, the shares were sold at a loss, and the CRA denied the deduction of the loss arguing that either the loss was on capital account, and if on business account that at the time the loss occurred the taxpayer was a non-resident and could only deduct losses from income of a business carried on in Canada.

ANALYSIS

The court reviewed the law and stated that if the losses were on capital account, they are not deductible against income (ITA s 3).

If the losses were on account of business, because the taxpayer was a nonresident for part of the year (a part-time resident), then the losses are only deducted in limited circumstances (ITA 114(a)(i). ITA 115(1)(c) limits deduction of business losses only against income only if the losses are from a business carried out in Canada.

The Court also addressed the Appellants fairness argument and referred to the Federal Court of Appeal decision in *Chaya v The Queen*, [2004 FCA 327](#):

[4] The applicant says that the law is unfair and he asks the Court to make an exception for him. However, the Court does not have that power. The Court must take the statute as it finds it. It is not open to the Court to make exceptions to statutory provisions on the grounds of fairness or equity. If the applicant considers the law unfair, his remedy is with Parliament, not with the Court.

- **Sas Ansari, JD LLM PhD (exp)**

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