

Definition of "Beneficial Owner" In Income Tax

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568864 BC Ltd v The Queen, [2014 TCC 373](#)

At issue was the time when beneficial ownership of patents was transferred to the Appellant under a security agreement, as required by ITA 79.1(2).

The Appellants lent money and obtained security over patents as part of the loan. The borrower filed for bankruptcy and the appellant seized the patents - which occurs for ITA purposes when the beneficial ownership of all the property is transferred (ITA 79.1(2)).

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ANALYSIS

The TCC noted that the phrase "beneficial ownership" is not defined in dictionaries, but that the words are separately defined in *The Shorter Oxford English Dictionary*:

- "owner" includes "one who has the right to claim or title to a thing"; and
- "beneficial" is defined as "of, pertaining to, or having the use of benefit of property, etc".

The SCC in [Covert v Nova Scotia \(Minister of Finance\)](#), [1980] 2 SCR 774, stated that:

It seems to me that the plain ordinary meaning of the expression "beneficial owner" is the real or true owner of the property. The property may be registered in another name or held in trust for the real owner, but the "beneficial owner" is the one who can ultimately exercise the rights of ownership in the property.

For purposes of Undepreciated Capital Cost, in *Wardean Drilling Ltd v MNR*, 69 DTC 5194 (Exc. Ct.), the court opined that:

[...] the proper test as to when property is acquired must relate to the title to the property in question or to the normal incidents of title, either actual or constructive, such as possession, use and risk [...] although legal title may remain in the vendor as security for the purchase price or as in the commercial practice under conditional sales agreements.

The "incidents of title" test was confirmed by the FCA in *Wardean Drilling Co v MNR*, [1978] F.C.J. No. 50 (QL); *Hewlett Packard (Canada) Ltd v R*, [2004 FCA 240](#); and *Morin v R*, [2006 FCA 25](#). See also *Prevost Car Inc. v. The Queen*, [2008 TCC 231](#).

The TCC summarized its analysis by stating:

[92] A beneficial owner of property therefore, is someone who is the real owner of the property, a person who is in possession of the property, a person who could derive income from the property or otherwise use it and who is the person who suffers any loss if the property is damaged or destroyed. The beneficial owner is the only person who can dispose of the property in his or her sole discretion without interference.

Therefore, where the person claiming ownership for CCA and UCC purposes exercised the attributes of a true owner, as indicated by the indicia of title and the person's actions in relation to the property, the person obtains sufficient interest so that the property becomes depreciable property to that person.

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