# Loss on Change in Use of Real Property - Sas Ansari

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*Donaldson v The Queen*, 2016 TCC 5

At issue was the correct rules to apply to determine the capital loss and terminal loss resulting from a decrease in property value between two changes in use - primary residence to rental property back to primary residence.

**FACTS**

The taxpayers moved from what was their primary residence for work purposes and decided to rent the property out. This resulted in a change in use along with a deemed disposition at FMV and deemed acquisition with cost at FMV. After a year, the tenant moved out and the taxpayers decided to make the property and house their primary residence again - triggering another deemed disposition and acquisition due to a change in use. The taxpayer's had obtained a professional valuation at the time of the changes in use.

The claimed a terminal loss and a capital loss on the house and land triggered by the deemed dispositions on the changes in use on the basis of the decrease in FMV from the date of the change to rental property to the date back to primary residence.

**ANALYSIS**

The appeal for the wife was dismissed as it was an appeal from a Nil assessment - *Okalta Oils Ltd. v Minister of National Revenue*, [1955] S.C.R. 824; *Interior Savings Credit Union v HMTQ*, 2007 FCA 151; *Chagnon v. Normand* (1889), 16 S.C.R. 661 (S.C.C.).

With respect to the husband, the Court reviewed the ITA provisions applicable. When property changes from income producing to non-income producing, or vice versa, the ITA deems there to have been a deemed disposition at FMV and a deemed acquisition at cost equal to FMV at the time of the change in use.

No capital loss can be claimed on the building as it is depreciable property - ITA subparagraph 39(1)(b)(i) - but a terminal loss can be claimed pursuant to subsection 20(16). In determining a terminal loss, the UCC (Undepreciated Capital Cost) of the building must first be established. On the first change in use in 2007 from personal to rental property (ITA 45(1)(a)(i)) a deemed disposition occurred (ITA 13(7)(b), and the second from rental to personal property in 2008 (ITA 45(1)(a)(ii), triggering another deemed disposition (ITA 13(7)(a)).

The UCC on the first change in use is determined according to paragraph 13(7)(b) which sets the capital cost of the building for the acquisition, and the proceeds of disposition are determined on the second change of use according to 13(7)(a). The terminal loss deductible pursuant to 20(16) is calculated by reference to the definition of UCC in 13(21), and is the difference between the deemed cost on initial disposition and the deemed proceeds on the latter acquisition (para 34) - *Solomons v R*, 2003 DTC 505 (TCC); *Ramesha v R*, 2005 TCC 389 ; *Gill v R*, [2001] 4 CTC 2876 (TCC); *Apte v R*, [1999] 4 CTC 2145.

The decrease in the value of the land, a non-depreciable capital property, is determined pursuant to ITA paragraphs 39(1)(b) and 40(1)(b). This is the difference between the proceeds of disposition and the cost of the land at the time of the changes in use.

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