

Small Business Deduction, Specified Investment Business

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0742443 BC Ltd v The Queen, [2014 TCC 301](#)

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The Taxpayer's business involved the rental of storage space. The MNR assessed it as the business of earning rental income, and therefore a specified investment business not eligible for the small business deduction. The Taxpayer argued that the business was more than just a storage rental business, but included the provision of significant services.

NOTE: The analysis and analogies in this decision are less than satisfactory as the Court does not provide sufficient guidance for taxpayer's determining the dividing line between rental income and income from a bundle of services that include/revolve around rental of property - particularly the list of core factors with reference to a motel service. This is quite unusual for a decision by [Justice Campbell J Miller](#).

ANALYSIS

The small business deduction applies only to income, below the small business limit, from an active business carried on by a corporation.

The phrase "active business carried on by a corporation" is defined in the ITA, subsection 125(7) to mean "any business carried on by a corporation other than a specified investment business [...]". The ITA, subsection 125(7), also defines "specified investment business" as "a business carried on by a corporation in the taxation year the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property".

The question, therefore, is: What is the principal purpose of the business carried on by the corporation?

The Court referred to *Weaver v HMQ*, [2008 FCA 238](#), where it was said that:

The definition of "specified investment business" does not ask about the general nature of the business of a corporation, or the degree of activity or passivity actually required by that business. Rather, it asks about the legal character of the income that the business

is intended principally to earn. If on the relevant date the legal character of that income is rent, for example, then the business meets the definition unless one of the statutory exceptions applies [...]

The court also stated that the trappings or labels used by the business are informative of intention, and in this case nothing in the advertising or invoices hinted to a bundle of services other than rental of storage space. The Court stated that "there was only one business" and that if "one took away the storage units there would be no business, whereas one could take away the other services and there still would be a storage business" (para 18). *[NOTE: could the same argument not be made for hotels or motels? - see Interpretation Bulletin [IT 73-R6](#)]* The Court also held that the majority of services provided were all core to the rental of storage space business and required to support the property income, though some (shuttling customers, arranging for movers, etc) were not.

The Court examined the meaning of the phrase "principal purpose". As noted in *Weaver v HMQ*, [2008 FCA 238](#), the CRA considers "principal purpose" to refer to something over 50%. In *Gill v MNR*, [1998 CanLII 201](#), reference was made to *Mayon Investments Inc. et al. v MNR*, [1991] 1 CTC 2245 ("*the principal purpose of which is to derive income from property*" is " ... when the source of revenue, the nature of the assets held and the purpose of the corporation are to derive income from property, such as interest income") and *Ed Sinclair Construction & Supplies Ltd. et al. v MNR*, [1992] 1 CTC 2218 ("*In determining the "principal purpose" of a business carried on by a corporation the stated object of the person who carries it on is not necessarily the only, or even the most important, criterion. Of critical importance is what the corporation in fact does and what its sources of income are.*"), and in *Lee v The Queen*, 53 DTC 925, where the ancillary services supporting deriving rental income did not affect the principal purpose being other than earning rental income.

The Court differentiated between the Taxpayer's business and that of a Motel by listing several factors in Paragraph 27, saying that what is important is that the bundle of services offered by a Motel "are used by every customer" and that "every hotel customer has an expectation of a bundle of hotel services in addition to a furnished room" (para 28). *[NOTE: This is debatable as many persons do not go to a hotel or a motel for the services of the motel but only to rent a room so that they can enjoy the sights, sounds, and attraction of the place the motel is located in]* The Court concluded:

[29] There is a tipping point where the provision of services overcomes the provision of property. The CRA have administratively determined that hotel/motel accommodation steps over that tipping point. I conclude that R-Xtra Co. does not: a few services to a few customers does not change the inherent nature of income from property.

[30] In summary, all of R-Xtra Co.'s customers were buying storage space: that is

what they paid for. Mr. Claeys provided services that anyone acquiring storage space would expect. He did also, however, go the extra mile and provide additional services, though has not provided sufficient evidence to in any way quantify the level of such customer service. Not every customer got loading, unloading, shuttle service or relocation advice for example. Every customer got top quality storage space. R-Xtra Co. carried on a business, the principal purpose of which was to derive income from renting storage space and that is deriving income from property.

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