

# Trading Within an RRSP is NOT a Business

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*Prochuk v The Queen*, [2014 TCC 17](#)

The taxpayer here sought to have losses incurred as a result of being defrauded characterized as a non-capital loss. This case dealt with the question of when activities amount to a business or an adventure in the nature of trade. This case is interesting in that activities within an RRSP were sought to support the taxpayer's characterization of his activities outside of the RRSP. The TCC held that "trading" inside an RRSP cannot be used as evidence of being a trader in respect of activities outside of an RRSP.

### FACTS

The taxpayer has education, training, and work experience in the financial trading and investing field. He supported himself through the use of trades, within his RRSP, for many years and managed to increase the value of his RRSP 8 fold during this period. He was involved as a victim in a number of fraudulent tax planning strategies, and made an investment into a foreign exchange business in the BVI that turned out to be a fraud.

He sought to deduct the losses of the fraudulent foreign exchange business as business losses, but the CRA reassessed on the basis that the losses were on capital account.

### ANALYSIS

The Court, in determining whether the property at question was capital property or inventory, considered the decision in *HMQ v Vancouver Art Metal Works Limited*, [1993] 2 FC 179 (FCA), where the relevant factors of a trader were identified as:

- frequency of transaction - traders have higher frequency
- duration of holding - traders hold for shorter durations
- intention to acquire for resale at a profit - traders want to sell to gain rather than make income from the property
- nature and quantity of the securities
- time spent on activity - traders spend time on trading

The TCC, however, stated that in considering the factors above, the activities within an RRSP cannot be considered in determining whether activities outside of the RRSP constituted a business. This is because the RRSP is a unique regime that provides contributors with tax incentive: trustee hold assets, can only hold "qualified investments", contribution deductible from income, growth within RRSP is tax deferred, withdrawals taxed pursuant to secs. 56(1)(t) and 146.4(5) of the ITA. A person in the business of trading: has to report income yearly, profit is determined pursuant to sec. 9 of the ITA. Therefore, the ITA treats a trader inside an RRSP differently than a trader outside of the RRSP - supported by the TCC decision in [Deep v HMQ](#).

[2006 TCC 315.](#)

The TCC also determined that the taxpayer's activities did not amount to "an adventure in the nature of trade". The court referred to the decision in [Canada Safeway Ltd v HMQ, 2008 FCA 24](#), where the criteria for determining whether a person was engaged in an adventure in the nature of trade were set out. Here the taxpayer was a passive investor holding the investment on a long term basis, and he hoped to obtain passive yields during the holding period and a capital gain on the eventual sale of the property - thus not involved in an adventure in the nature of trade.

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