Docket: 2014-3345(IT)G

BETWEEN:

HUNTLY INVESTMENTS LIMITED.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 31, February 1 and 2, 2017
at Vancouver, British Columbia
Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Appellant:	David Davies
Counsel for the Respondent:	Matthew Turnell

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2010, 2011 and 2012 taxation year are dismissed, with costs to the Respondent, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 21st day of December 2017.

"B.Paris"

Paris J.

Citation: 2017 TCC 255
Date: 20171221
Docket: 2014-3345(IT)G

BETWEEN:

HUNTLY INVESTMENTS LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] Under subsection 125(1) of the *Income Tax Act* (the "*Act*"), a Canadian-controlled private corporation is entitled to claim the small business deduction in relation to active business income earned in Canada. The small business deduction is not available on income from a specified investment business carried on by a corporation.

[2] A specified investment business does not include a business that has more than five full-time employees or could, without the services of associated corporations, reasonably be expected to require more than five full-time employees.

[3] The issue in this appeal is whether the Appellant carried on a specified investment business during its 2010, 2011 and 2012 taxation years. Those taxation years cover the period from September 1, 2009 to August 31, 2012.

[4] Since the Appellant employed fewer than five full-time employees in the years in issue, the case turns on whether it could reasonably have been expected to

require more than five full-time employees, if not for the services that were provided to it by its associated corporations.

Facts

The Appellant's Operations

[5] During the period in issue, the Appellant's business primarily consisted of owning and renting real estate in downtown Vancouver.

[6] Its rental property portfolio was made up of five buildings. One, the "Beaconsfield", had 40 units and was located at 884 Bute Street. The remaining four buildings were adjacent to one another and contained 40 units in all. Those buildings consisted of a six storey apartment building at 601 Bute Street, another small apartment building at 1218 Melville Street, a house at 649 Bute Street, and a rooming house at 1222 Melville Street. This group of buildings was collectively referred to by the Appellant as the "Stadacona", the name of the largest building of the four. In these reasons, I will refer to the group as the "Stadacona" as well.

[7] Brent Wolverton is the president and a director of the Appellant and has been in charge of its operations since the early 1990s.

Associated Corporations

[8] The two associated corporations that provided services to the Appellant during the years in issue were Pacific Investment Corporation Limited ("PIC") and Wolverton Securities Ltd ("WSL").

[9] PIC was in the business of developing, building and holding real estate in the Vancouver area. It owned two residential apartment buildings, the "Holly Lodge", with 84 suites and "Caroline Court" with 75 suites, and a commercial building**.** It also owned a number of restaurants and breweries and brew pubs, either directly or through subsidiaries.

[10] WSL was a securities brokerage business with offices across Western Canada. It had between 25,000 and 35,000 customers and revenues in the tens of millions of dollars. It had between 125 and 150 employees, including about 25 accountants, and a payroll of around $3 million.

[11] The Appellant, PIC and WSL were associated with each other for the purposes of subsection 256(1) of the *Act*, because members of the Wolverton family directly or indirectly controlled all three corporations.

[12] Brent Wolverton is also the president and a director of PIC, and was the CEO of WSL until WSL sold its business in 2016.

Overview of the Appellant's Operations

[13] During the years in issue, Brent Wolverton was active in managing the Appellant's business. The Appellant also used an arm's length property management company, Dorset Realty Group Canada Limited ("Dorset"), and employed an operations manager and resident managers for its buildings.

[14] In addition, certain management, accounting and administrative services were performed for the Appellant by employees of PIC and WSL.

Dorset's Role

[15] Dorset provided property management services to the Appellant under a contract entered into in 2004. Although the testimony of Brent Wolverton and Kim Schuss, the owner of Dorset, did not fully align with respect to the work done by Dorset for the Appellant, I am satisfied that Dorset:

> -accounted for the rent and deposited it after it was collected by the building managers,
>
> -renewed leases and assisted the Appellant in setting rent increases,
>
> -approved new tenants after conducting credit checks and speaking to references and prepared eviction notices and dealt with tenant disputes and proceedings before the Residential Tenancy Board,
>
> -provided payroll services for the Appellant's employees, issued T4 slips and made remittances,
>
> -did some supervision of the building managers and hired new building managers with the approval of Brent Wolverton,

-tracked income and expenses for the buildings and maintained most of the paperwork pertaining to its operations, including the rental roll, contracts, tenancy agreements, rent increases, eviction notices and invoices,

-kept track of property assessments and property taxes and filed property tax appeals,

-arranged for ongoing services for the buildings, such as garbage removal and negotiated some contracts for materials and supplies,

-arranged for some incidental repairs, and on larger repair projects found tradespeople and obtained quotes for Brent Wolverton and the operations manager, and

-conducted inspections of the buildings and helped with planning and budgeting repairs.

[16] Huntly agreed to pay Dorset a fee equal to 2.75% of the rents from the properties. The evidence showed that the Appellant in fact paid Dorset close to 3% of rent collected, which was approximately $30,000 annually.

The Appellant's Employees

i) Building Managers

[17] For all of the years in issue, the Appellant employed a number of building managers who generally lived on site. For part of the period in issue, PIC provided building managers for the Stadacona.

[18] The building managers' duties included collecting rent, showing suites to prospective tenants, dealing with tenant complaints, doing general maintenance and minor repairs, scheduling tenant moves and doing suite inspections. Building managers also dealt with tenants who did not pay and served eviction notices. Often, the Appellant hired a couple to fill a building manager position, and the couple performed the duties as a team.

[19] Building managers were paid a salary calculated on a 40 hour week at minimum wage. The couples who worked as building managers split the pay for

the position and were each issued a T4 by the Appellant, generally for equal amounts.

[20] It appears that there were no set work hours for the building managers and they did not have to track their hours. They were not required to be in the building during fixed hours but they did have to be available when calls came in. Brent Wolverton said that the resident managers were required to put in 40 hours a week, but were permitted to work those hours when they wanted. He also said that resident managers were on call 24 hours a day in case of emergency.

[21] The building managers employed by the Appellant were Jennifer Wells, Bradley and Jeeyoon Bennett, Stephen Hubley, Wendy Moore and Murray Miller.

[22] Jennifer Wells managed the Beaconsfield from May 15, 2010 to April 30, 2011 and the Stadacona for most of this period, from June 1, 2010 to April 30, 2011.

[23] Bradley and Jeeyoon Bennett, a couple, worked as Beaconsfield resident manager from May 1, 2011 until June 30, 2012.

[24] Stephen Hubley-was Beaconsfield's resident manager from July 1, 2012 until past the end of the period in appeal.

[25] Wendy Moore and Murray Miller, a couple, were the building managers of the Stadacona from September 1, 2009 to May 31, 2010.

[26] On May 1, 2011, Jennifer Wells, ceased to be the building manager of the Beaconsfield and ceased to be employed by the Appellant. She was then hired by PIC as the building manager at the Holly Lodge. However, while she was managing the Holly Lodge, she still continued to manage the Stadacona and did so at least until the end of 2012. She was not paid by the Appellant for her work at the Stadacona and was only paid by PIC during that period.

[27] Jennifer Wells' husband, Paul Wells, assisted her in managing the Holly Lodge and the Stadacona. He may also have assisted her with the Beaconsfield, but the evidence is not clear on this point. He was paid $11,000 and $23,350 by PIC in the 2011 and 2012 calendar years, respectively.

ii) Operations manager

[28] Boz Najdovski was employed by both the Appellant and PIC simultaneously as operations manager for their properties up until the end of its 2010 taxation year. Brent Wolverton testified that Najdovski was a long-time employee of the Wolverton group of companies and worked full-time for the group.

[29] Najdovski coordinated and supervised major maintenance and repair projects, performed repairs and maintenance and supervised the building managers for both the Appellant and PIC.

[30] Najdovski had T4 income of $54,487.50 from the Appellant in 2010. His T4 income from PIC that year was $36,144. Brent Wolverton said that Najdovski's salary from each company was based on the work he did for them. Najdovski did not have set hours for either company but Brent Wolverton testified that he was available full-time to the Appellant if needed.

[31] Najdovski became ill and stopped working near the end of the Appellant's 2010 taxation year. He passed away in December 2010. After Najdovski's death, the Appellant did not employ anyone in the operations manager position again.

[32] After Najdovski stopped working, and up to December 2011, some of the operations manager duties had been performed for the Appellant by Dorset, Brent Wolverton and Jennifer Wells and some of the major repairs and maintenance work was put off.

[33] In December 2011 WSL hired Togie Moyes to work as the operations manager for both the Appellant and PIC. Moyes was an old friend of Brent Wolverton's and had previously worked for the Wolverton group doing small jobs as an independent contractor.

iii) Other Employees

[34] Brent Wolverton received employment income of $60,000 from the Appellant in its 2011 taxation year. He was not paid by the Appellant in the other years in issue. He said that he provided high level management services to the Appellant throughout the years in issue. No record was kept of the hours he worked for the Appellant.

[35] Linda Wolverton, Brent Wolverton's spouse, was paid wages of $35,000 by the Appellant in its 2010 taxation year. According to Brent Wolverton, she was a "designated backup" for the company, and was mainly there to be available in

emergencies and to collect some of the laundry money. He said that the amount she was paid was fair compensation for making herself available on a standby basis. She was not paid by the Appellant in the other years under appeal.

[36] In both 2010 and 2011, the Appellant paid wages of $3,000 to Ellen Paterson, the Chief Financial Officer of WSL. According to Brent Wolverton, she did some strategic accounting work for the Appellant in those years.

[37] The Appellant also had two part-time employees in 2012, Xavier "Paco" Besne and Timothy Street, who did repairs and odd jobs.

Services Provided by WSL

[38] As previously indicated, Togie Moyes, was hired by WSL on a full-time basis in December 2011 to carry out the duties of operations manager for the Appellant and PIC. Brent Wolverton said that Moyes was available to both PIC and the Appellant on an as needed basis and that Moyes did not perform any work for WSL. No explanation was given why he was hired by WSL.

[39] Moyes did not receive any remuneration from the Appellant, and WSL did not bill the Appellant for his services. No record was kept of the hours he worked for the Appellant.

[40] Brent Wolverton said that other WSL employees performed work for the Appellant.

[41] He, himself, provided high level management services to the Appellant throughout the period in question and his executive assistant at WSL, Margaret Ferguson, assisted him in carrying out that work. Her tasks included running his calendar, managing calls and taking notes at meetings.

[42] Brent Wolverton also said that WSL's manager of corporate finance, Rose Zanic, and WSL's accounting staff were made available to PIC and the Appellant as required. He testified that Zanic assisted with the preparation of the Appellant's financial statements, and worked on some valuations and financial studies that related to the Appellant. However, at discovery, he indicated that Zanic had not provided any services to the Appellant during the period.

[43] Brent Wolverton also said that one of the accounting staff, Shelly Cheung assisted the Appellant by providing bookkeeping, payables and other related services.

[44] Brent Wolverton also testified that the services provided by Ellen Paterson to the Appellant were more extensive than what she was paid for by the Appellant and that she provided "strategic accounting" advice, but no specific evidence of those services was provided.

[45] Brent Wolverton testified that part of the services he and other WSL staff provided to the Appellant related to redevelopment plans that were drawn up for the Stadacona site.

[46] Wolverton said that the value of the Stadacona had increased to about $50 million by 2009 and therefore that the Appellant was unable to earn a satisfactory return from the existing rental units. There was limited potential for rent increases because of rent controls, and the buildings were old and in need of constant repair. Given the age and condition of the Stadacona buildings, and given their prime downtown location, Wolverton said that the Appellant felt that its best option would be to pursue redevelopment of the Stadacona site.

[47] In early 2009, the Appellant began to explore the possibility of building new rental housing, and hired an architect to outline some options. The Appellant also began discussions with the City of Vancouver to find out what incentives were being offered for the construction of new rental stock. Preliminary plans for a 47 storey tower with 368 rental units were drawn up in April 2009. Wolverton said though, that this proposal was never shown to the City and was simply part of the envisioning stage of the planning process.

[48] Brent Wolverton acknowledged that after the preliminary plans were drawn up, work proceeded slowly due to the financial crisis. Wolverton said that during and after the financial crisis he had to focus on WSL's securities business and did not have much time to spend on the Stadacona redevelopment plans. He admitted that the planning process was stalled for a few years and was not restarted again until 2013 and 2014. By 2016, Huntly had settled on a redevelopment plan based on the initial options outlined in 2009 and a revised plan was prepared by a new architect.

Services provided by PIC

[49] As set out above, Jennifer Wells and her husband worked as building managers of the Stadacona from May 1, 2011 through to the end of the appeal period while they were employees of PIC. They also worked as resident managers of the Holly Lodge, owned by PIC. Holly Lodge had 84 rental units. The Stadacona had 79.

Appellant's Position

[50] The Appellant argues that the "but for" test in paragraph (b) of the definition of "specified investment business" requires one to count the actual full and part-time employees employed directly by the Appellant and then add to that total the number of full and part-time employees that could reasonably be expected to be required (or that might be required) if the associated corporations had not provided any services.

[51] The Appellant says that the test in paragraph (b) is not applied on an employee-by-employee basis from the standpoint of the corporation providing the services, but instead asks how many employees the Appellant could reasonably be expected to require on its own. The Appellant says that one must look at the services that are provided, whether there is overlap between positions that could reasonably be merged into a single position and then determine how many full-time employees would reasonably be required by the Appellant.

[52] Also, the Appellant says that the test does not contemplate the contracting out of the services provided by the associated corporations, even where that might be more economical. The test requires a determination of how many full-time employees would be required by the Appellant to perform those services.

[53] The Appellant maintains that the phrase "could reasonably be expected to require", means that they must show more than a mere possibility that the Appellant would require more than five full-time employees, absent the services provided by associated corporations. The theoretical employment of these individuals must be likely, but the test does not require a standard as high as on a balance of probabilities.

[54] According to the Appellant, the Appellant's business during the relevant taxation years was comprised of the operation and management of the Beaconsfield and the Stadacona plus the planning and execution of a major construction project.

[55] By the Appellant's count, it employed at least two full-time and two part-time employees in its 2010 taxation year, one full-time employee and two part-time employees in 2011 and one full-time and two part-time employees in 2012.

[56] The full-time employees in the 2010 year were the operations manager, Boz Najdovski, and one full-time building manager for the Beaconsfield (Wendy Moore until May 2010 and then Jennifer Wells until the end of the year.)

[57] For the 2011 year, the full-time employee was the Beaconsfield building manager (Jennifer Wells until May 2011 and Bradley Bennett thereafter.)

[58] For the 2012 year, the Appellant says its full-time employees were the building manager of the Beaconsfield (Bradley Bennett until July 2012 and Stephen Hubley until the end of the year.)

[59] In order to replace the services provided by WSL and PIC, the Appellant maintains it would have required four full-time employees in its 2010 year: a CEO, and executive assistant to the CEO, a chartered accountant, certified general accountant or equivalent and a staff accountant or clerk. In addition to those positions, the Appellant says that it would have required a full-time building manager to perform the services provided by Jennifer and Paul Wells in respect of the Stadacona in its 2011 and 2012 taxation years, and finally, a full-time operations manager to replace Togie Moyes in the 2012 year.

[60] In total, then, the Appellant says that it would have required at least six full-time employees in its 2010 and 2011 taxation years, and at least seven in its 2012 taxation year.

Statutory Provisions

[61] Subsection 125(1) sets out the small business deduction, as follows: :

> Small business deduction
>
> > 125 (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the taxation year, a Canadian-controlled private corporation, an amount equal to the corporation's small business deduction rate for the taxation year multiplied by the least of

> (a) the amount, if any, by which the total of
>
> (i) the total of all amounts each of which is the amount of income of the corporation for the year from an active business carried on in Canada, other than an amount that is
>
> (Emphasis added)

[62] The small business deduction rate can only apply to income earned by a corporation from an "active business" and the definition of "active business" excludes a corporation that carries on a specified investment business. As a result, if it is determined that the Appellant is carrying on a specified investment business then it will not be able to access the small business deduction.

[63] The terms "active business" and "specified investment business" are defined in subsection 125(7), as follows:

> *active business carried on by a corporation* means any business carried on by the corporation other than a specified investment business or a personal services business and includes an adventure or concern in the nature of trade;
>
> (Emphasis added)
>
> *specified investment business*, carried on by a corporation in a taxation year, means a business (other than a business carried on by a credit union or a business of leasing property other than real or immovable property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where
>
> (a) the corporation employs in the business throughout the year more than 5 full-time employees, or
>
> (b) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than 5 full-time employees if those services had not been provided;
>
> (Emphasis added)

[64] In earlier jurisprudence there had been a dispute over whether "more than 5 full-time employees" indicated that six full-time employees were required. This

argument was put to rest by this Court in *489599 B.C. Ltd. v. The Queen*, 2008 TCC 332, where it was determined that "more than 5 full-time employees" could be satisfied by five full-time employees plus any part-time employees. However, it is clear that in reaching five full-time employees, part-time employees could not be counted or added up to constitute full-time *Lerric Investments Corp v. The Queen*, [1999] 2 CTC 2714.

[65] The meaning of "full-time" employee in the context of the definition of specified investment business has been examined by the Federal Court in *The Queen v. Hughes & Co. Holdings Ltd.*, 94 DTC 6511.The Court in *Hughes* focused on a regular work schedule and normal working hours as key considerations in determining if an employee is full-time. In finding that the employee in that case was not full-time, the Court said:

> He was employed to work "for irregular hours of duty": his services were "not required for the normal work day, week, month or year": he was regularly employed to work fewer than the regular working hours of each working day, if indeed his services were performed each and every day. Parliament expressed the term "full-time employee" in the ordinarily understood use of the words.

[66] This approach was adopted by the Federal Court of Appeal in *Baker v. The Queen*, 2005 FCA 185 at paras 14-15:

> In my view, the conclusion by Muldoon J. in *Hughes and Co., supra*, at page 6517, that the term "full-time" employment in the definition of "specified investment business" is used in contra-distinction with "part-time" employment, is correct. This distinction reflects the broad consideration which Parliament had in mind when it provided for a minimum of five full-time employment throughout the year. Only full-time employment, as opposed to part-time employment, qualifies.
>
> While Town Properties employees worked five days a week, and to that extent were regularly employed, they did not work the normal working hours of each day, week and month. Indeed, their schedule of four hours per day allowed them to pursue more than one job with relative ease.

[67] Following the Federal Court of Appeal's decision in *Baker*, the test to determine whether an employee is full-time involves examining whether the employees worked normal working hours each day, week and month.

Analysis

[68] In these appeals, the Appellant's principal purpose was to derive rental income from residential properties. Therefore, its business would be considered a specified investment business, unless one of the exceptions in the definition of that term applies.

[69] Since the Appellant did not directly employ more than five full-time employees in any of the relevant taxation years, the only exception that could apply is found in paragraph (b) of the definition of "specified investment business". The exception in paragraph (b) posits a hypothetical "but for" test to determine whether a corporation can avoid classification as a specified investment business: but for the services provided by associated corporations, could the Appellant reasonably be expected to require more than five full-time employees.

[70] The Appellant correctly states that, in order to apply the test, it is first necessary to know how many full-time employees the Appellant in fact employed in the years in issue.

[71] The next step is to determine how many full-time employees would be required in respect of the services performed by the associated corporations.

[72] I agree with the Appellant's submission that the test only contemplates the use of employees by the Appellant to perform the relevant services, and not outside contractors, since the language of the provision only refers to the use of employees. Otherwise, it seems to me that it could be argued that all of the services provided by the associated corporations could be performed by independent contractors and therefore the exception in paragraph (b) might never apply.

[73] I do not agree, however, that the test excludes consideration of replacing the services of the associated corporations with part-time employees. The use of the phrase "could reasonably be expected" must be given its ordinary meaning, and clearly it would not be reasonable to expect a corporation to hire a full-time employee where there would only be enough work to occupy an employee part-time. The text of the provision is, in my opinion, clear and unambiguous in this respect.

[74] In addition, the Appellant also submitted that the phrase "could reasonably be expected to require" imposed a lower burden of proof on the Appellant than a balance of probabilities. Given my conclusions below, it is not necessary to deal with this point.

[75] I will turn first to the question of how many full-time employees the Appellant had during the period in question.

[76] According to the evidence, the Appellant mostly employed couples as building managers, and in each case it appears that the couples split a full-time position between them. Since each person in the couple was paid for his or her portion of the work, I conclude that each person in the couple was in fact employed part-time by the Appellant. This conclusion is supported by the separate T4 slips issued to Wendy Moore and Murray Miller, and Bradley and Jeeyoon Bennett.

[77] Only Jennifer Wells was employed full-time, from May 1, 2010 until April 30, 2011. That period spanned a portion of each of the Appellant's 2010 and 2011 taxation years. Therefore, Wells was not employed full-time throughout either of those years.

[78] It follows that the Appellant did not employ any building managers full-time throughout any of the years in issue.

[79] The Appellant also says that Boz Najdovski was a full-time employee in its 2010 taxation year. However, Najdovski worked for both the Appellant and PIC during that time, and Brent Wolverton testified that Najdovski's salary from each corporation was based on the work he performed for them. According to the amounts he was paid in 2010, he worked 60.1% of his time for the Appellant. In light of the apportionment of Najdovski's salary between the Appellant and PIC, I do not accept that he was made available to the Appellant full-time, as Wolverton said he was. It makes no sense to say that Najdovski was made available to the Appellant while he was in fact performing work for PIC.

[80] I find that Najdovski was not a full-time employee of the Appellant in its 2010 taxation year.

[81] Therefore, based on the evidence produced at the hearing, I conclude that the Appellant had no full-time employees throughout any of the years in appeal.

[82] Next, I must determine how many full-time employees the Appellant would have required to replace the services provided by WSL and PIC.

[83] The Appellant maintains that, to replace those services, it would have required four full-time employees in its 2010 year: a CEO, an executive assistant to

the CEO, a chartered accountant or certified general accountant or equivalent, and a staff accountant or clerk.

[84] In addition to those positions, the Appellant says that it would have also required a full-time building manager to perform the services provided by Jennifer and Paul Wells in respect of the Stadacona in its 2011 and 2012 taxation years, and finally, a full-time operations manager to replace the services of Togie Moyes in the 2012 year.

[85] The Appellant's contention that it would have required a full-time CEO, executive assistant, accountant or CFO and accounting clerk is in large part predicated on the proposition that it was actively pursuing a redevelopment proposal in respect of its Stadacona site during its 2010 to 2012 taxation years. I find that the evidence does not support a finding that the Appellant was actively pursuing redevelopment during the years in issue. The only documents relating to the redevelopment activity submitted at the hearing were the architectural plans from 2009 and 2016. In light of Brent Wolverton's admission that the redevelopment activity was at a standstill for a number of years after the 2009 plans were drawn up, and given the lack of any evidence of any steps taken in furtherance of the redevelopment in the years in issue, I infer that little, if anything was done in that regard. Also, had any work been undertaken on the redevelopment proposal during the years in issue, I would have expected that work to have been reflected in contemporaneous documentation or records. The failure of the Appellant to produce such material at the hearing also supports the inference that the project was at a standstill.

[86] I also find that the services performed by Brent Wolverton for the Appellant consisted mainly of providing direction to and supervision of the operations manager and Dorset and certain employees of WSL. He also assisted on occasion with tasks such as the redrafting of the rental agreement used by the Appellant. By his own admission, he spent the majority of his time during the relevant period on WSL business and also managed the affairs of PIC. I note that PIC's rental portfolio was almost double the size of the Appellant's and that PIC was also involved in a number of active business ventures. I therefore find it likely that Wolverton would have had to spend more time on the management of PIC's affairs than on those of the Appellant, and that in light of Wolverton's other duties (for both WSL and PIC), it is more likely than not that the services he performed for the Appellant would only have taken up a minor part of his time. This conclusion would also be supported by the fact that WSL did not charge the Appellant for the

services provided by Brent Wolverton or attempt to track his time or apportion his salary to account for work done for the Appellant and PIC.

[87] For these reasons, I am not satisfied that the Appellant has met the burden of showing that in the absence of Wolverton's services, it would have required a full-time CEO. It follows from this conclusion that a full-time executive assistant would not have been required by the Appellant to replace the services of Margaret Ferguson, Wolverton's executive assistant at WSL.

[88] The Appellant has also failed to convince me that it would have required a full-time accountant and accounting clerk but for the services provided by Rose Zanic and the accounting staff at WSL. Zanic was not called to testify, nor was any other employee of WSL's accounting department. It is difficult to assess the extent of the services they performed for the Appellant in the absence of such testimony. Wolverton, himself, said that he could not determine how many hours any of these WSL employees spent working on the Appellant's matters and that WSL did not bill the Appellant for any of their work. Furthermore, I question the reliability of Wolverton's testimony concerning the extent of the services provided by Rose Zanic's, in light of his statement on discovery that he did not recall her doing any work for the Appellant. His explanation that he had since seen material that allowed him to recall what she did was not corroborated by reference to any document put in evidence.

[89] On the other hand, I accept the testimony of Kim Schuss that the day-to-day accounting for the Appellant was done by Dorset under the Property Management Agreement. His evidence is consistent with Wolverton's testimony that most of the accounting services provided to the Appellant by WSL staff were performed around the Appellant's year end and related to the preparation of the financial statements.

[90] With regard to the services provided by Ellen Paterson, I note that she received wages from the Appellant of only $3,000 in 2010 and 2011, which tends to show that she provided a very modest level of support to the Appellant during those periods. Brent Wolverton's testimony about her role vis-à-vis the Appellant lacked detail and, in the absence of testimony from Ms. Paterson or records of time spent by her on the Appellant's business, I am not convinced that she spent much time providing services to the Appellant.

[91] The Appellant also maintains that without the services provided by PIC employees Jennifer and Paul Wells from May 1, 2011 through to the end of August

2012, the Appellant would have required a full-time building manager for the Stadacona. I accept that this was the case. All of the evidence suggests that the building manager position was a full-time position for one person. The salary of the building managers was set on the basis of 40 hours of work per week at minimum wage, and while the hours were flexible, where the job was performed by one individual, the manager was required to work the regular number of working hours each week that is considered full-time. However, Paul and Jennifer Wells only became employees of PIC in May 2011 and therefore PIC only provided their services to the Appellant for a portion of the Appellant's 2011 taxation year and the whole of its 2012 taxation year. Accordingly, the Appellant would have required a full-time employee to replace the Wells' services throughout the Appellant's 2012 taxation year only.

[92] Lastly, the Appellant submitted that without the services of Togie Moyes, who was employed by WSL, it would have required a full-time operations manager. The difficulty with this position is that Moyes acted as operations manager for both the Appellant and PIC, and PIC's rental portfolio was roughly double the size of the Appellant's. Therefore, it would seem implausible that the Appellant would have required a full-time operations manager to replace Moyes' services in its 2012 taxation year. In any event, in the absence of any precise evidence of how much time Moyes spent on each corporation's business, it is impossible for me to determine the extent of the work he did for the Appellant. The lack of evidence leads me to conclude that the Appellant has not met the onus on it regarding Moyes' services.

Conclusion

[93] In summary, the Appellant has only been able to convince me that it would have required one full-time employee in its 2012 taxation year in the absence of the services that were provided to it by WSL and PIC. Since it has not shown that, in the absence of the services provided by WSL and PIC, it would have required more than five full-time employees throughout the years in issue, I find that it carried on a specified investment business in those years.

[94] The appeals are dismissed, with costs to the Respondent.

Signed at Vancouver, British Columbia this 21st day of December 2017.

"B.Paris"

Paris J.

CITATION:	2017 TCC 255
COURT FILE NO.:	2014-3345(IT)G
STYLE OF CAUSE:	Huntly Investments Limited and Her Majesty the Queen
PLACE AND DATES OF HEARING:	Vancouver, British Columbia January 31, February 1 and 2, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Paris
DATE OF JUDGMENT:	December 21, 2017

APPEARANCES:

Counsel for the Appellant:	David Davies
Counsel for the Respondent:	Matthew Turnell

COUNSEL OF RECORD:

For the Appellant:

Name:	David Davies
Firm:	Thorsteinssons LLP Vancouver, British Columbia

For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada