Docket: 2017-231(IT)G

BETWEEN:

PINNACLE INTERNATIONAL REALTY GROUP II INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 7–9, 2022, at Vancouver, British Columbia

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant:	Matthew G. Williams E. Rebecca Potter S. Natasha Kisilevsky Chris Canning
Counsel for the Respondent:	Whitney Dunn Alexander Wind Erin Krawchuk

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JUDGMENT

In accordance with my Reasons for Judgment:

The appeal from the Notice of Reassessment dated February 11, 2015 made under the *Income Tax Act* for the Appellant's taxation year ending October 31, 2006 is dismissed, with costs.

Signed at Halifax, Nova Scotia, this 30th day of November 2023.

"S. D'Arcy"

D'Arcy J.

Citation: 2023 TCC 161
Date: 20231130
Docket: 2017-231(IT)G

BETWEEN:

PINNACLE INTERNATIONAL REALTY GROUP II INC.,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

D'Arcy J.

[1] The issue in this appeal is whether subsection 103(1) or subsection 103(1.1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (the "**Act**") applies to prevent the use of a loss co. to shelter approximately $11 million of income realized by a partnership on the sale of strata units (condominium units) in a large condominium building that the partnership had developed and built in Vancouver.

[2] The appeal relates to the Appellant's taxation year ending October 31, 2006. When assessing the Appellant, the Minister applied subsection 103(1) to include approximately $10.1 million in the Appellant's taxable income.

[3] The parties filed a Partial Agreed Statement of Facts (the "**PASF**"), which is attached as Appendix A, and a Joint Book of Documents.

[4] With respect to the Joint Book of Documents, the parties filed a document agreement dated November 3, 2022 in which they agreed to the authenticity and admissibility of the documents. They also agreed that each document met the threshold of relevance for admissibility at trial, subject to the submissions of the parties as to the appropriate weight to be given to the specific documents.

[5] The document agreement does not refer to the truth of the contents of the documents. At the commencement of the hearing, I asked the parties if they agreed on the truth of the contents of the documents. Counsel for both parties informed the

Court that they did. On the basis of this oral agreement and the written document agreement, I admitted the Joint Book of Documents as Exhibit A/R-1.

[6] The Appellant called four witnesses: Ms. Yvette Franc, Mr. Leslie Steve Fovenyi, Mr. Michael De Cotiis, and Ms. Amy Feng. The Respondent did not call any witnesses.

[7] I did not find the evidence of Ms. Franc to be particularly helpful. Ms. Franc is currently the Director of Accounting and Financial Reporting for Pinnacle International. She did not work for the Appellant or a related company during the period at issue.

[8] Ms. Feng is a Canada Revenue Agency ("**CRA**") auditor who was involved in the audit of the Appellant. Her testimony was brief. However, she did provide useful evidence with respect to the proceeds realized on the sale of the condominium units.

[9] Mr. Fovenyi and Mr. De Cotiis provided most of the relevant oral evidence. During the relevant period, Mr. Fovenyi was the Chief Financial Officer for the Pinnacle International group of companies (the "**Pinnacle Group**"), which included the Appellant. Mr. De Cotiis is the owner and controlling mind of the Pinnacle Group.

[10] Generally speaking, I found both witnesses to be credible; however, as I will discuss, both Mr. Fovenyi and Mr. De Cotiis overstated Mr. De Cotiis's role in the development of the condominium building that is at the centre of this appeal.

Summary of Facts

[11] The Pinnacle Group describes itself as one of North America's leading builders of luxury condominium residences, master-planned communities, hotels, and commercial developments.[1] Mr. Fovenyi described the Pinnacle Group as a group of companies whose focus is on acquiring land, developing the land and then either selling the developed land to purchasers or holding the developed land as a long-term investment.

[1] Exhibit R-1.

[12] Pinnacle International Realty Group Inc. ("**PIRG**") is the primary holding company for the Pinnacle Group. Mr. De Cotiis owns 100% of the outstanding shares of PIRG and is its sole director.

[13] The Appellant, which was incorporated in 1994, is a wholly owned subsidiary of PIRG. Mr. Fovenyi described its role within the Pinnacle Group as providing administrative support services to other companies in the group, such as corporate, secretarial, administrative, human resources, accounting, and payment processing services. It handled all of the banking affairs for the corporate members of the Pinnacle Group.

[14] Notwithstanding the testimony of Mr. Fovenyi, the evidence before me is that the Appellant performed more than administrative services. For example, it performed property/asset management services for the revenue properties held by the Pinnacle Group. In addition, as I will discuss, it was involved in managing the development of at least one project and co-ordinating the sale of new condominium units.

[15] The PASF states that between 2001 and 2006, the number of employees of the Appellant increased from 21 to 32 and that between 1994 and 2006, the Appellant was involved in 17 real estate development projects.

[16] Mr. Fovenyi noted that the Pinnacle Group, since 1997 or 1998, used the same general ownership structure for each development project that it carried out. Specifically, it used a separate single-purpose partnership for each development project, composed of one partner holding a 95% interest in the partnership and a second partner holding a 5% interest in the partnership.

[17] Mr. Fovenyi testified that the Appellant held the 5% interest in each partnership. He stated that it was responsible for the administrative tasks required for each development, such as accounting, human resources, and payment processing. Mr. Fovenyi asserted that the 95% partner, normally a sole-purpose corporation, was responsible for the development tasks, such as acquiring the property, developing the strategic plan and marketing plan for the project, engaging the general contractor, overseeing the building of the project and overseeing the sales program for the project.

[18] Mr. Fovenyi explained that the Pinnacle Group used a separate partnership for each project to minimize risk.

[19] The use of a sole-purpose corporation to hold the 95% interest was intended to isolate risk for the Pinnacle Group and to allow for a structure that would facilitate the raising of capital. Mr. De Cotiis explained that the structure provided the Pinnacle Group with the ability to easily add a partner if required for financial reasons. I assume that he was referring to adding an arm's-length third party.

[20] Mr. Fovenyi testified that the Appellant's 5% interest was intended to provide the Appellant with a sufficient return to cover its overhead and the cost of any support services that it incurred. In my view, it also allowed a Pinnacle Group company that carried on a substantial ongoing business to participate in the partnership.

[21] One of the Pinnacle Group's development projects was a residential high-rise condominium development located at 550 Taylor Street in Vancouver (the "**Taylor Project**"). The Pinnacle Group formed the Pinnacle Taylor Development Partnership (the "**Partnership**") to develop the Taylor Project.

[22] The following members of the Pinnacle Group were involved in the Taylor Project:

- the Appellant;
- Pinnacle International Lands Inc. ("**Pinnacle Lands**");
- Mondiale Development Ltd. ("**Mondiale**"); and
- Pinnacle International (Taylor) Plaza Inc. ("**Taylor**").

[23] PIRG owned 100% of the shares of each of these companies.

[24] Similar to the interest that it held in the other partnerships formed by the Pinnacle Group, the Appellant held a 5% interest in the Partnership.

[25] Pinnacle Lands' role within the Pinnacle Group was to seek land development opportunities. It carried out preliminary due diligence on each opportunity, and if the decision was made to acquire the land, it would then assign the right to acquire the land to a single-purpose entity within the Pinnacle Group. Mr. De Cotiis was the sole director of Pinnacle Lands, which had no employees between 2001 and 2006.

[26] Mondiale's role within the Pinnacle Group was to act as a general contractor on each project. Mr. De Cotiis described it as the construction arm of the Pinnacle

Group. It recommended the subcontractors who actually performed the construction. Mr. De Cotiis testified that he "run[s]" Mondiale. It is not clear to the Court whether, during the relevant period, Mondiale had any employees or relied solely on third-party subcontractors to perform its duties with respect to various projects, including the Taylor Project. Paragraph 18 of the PASF refers to a Mr. Carlo Meola as being Mondiale's project manager. However, as I will discuss, Mr. Meola was an employee of the Appellant.

[27] Taylor was a sole-purpose corporation that was incorporated on June 2, 2003 to hold the 95% interest in the Partnership and perform certain functions with respect to the Partnership. Mr. De Cotiis served as its President and Secretary. It had no other directors, officers or employees at any material time.

[28] Mr. Fovenyi described the Taylor Project as a somewhat risky project since it involved land situated in a section of Vancouver that presented challenges. Mr. De Cotiis testified that he first became aware of the development opportunity with respect to the Taylor Project through a newspaper advertisement placed by the City of Vancouver. At the time, the City of Vancouver was trying to entice developers to buy land and build high-rise developments in that particular section of Vancouver.

[29] The actual development of the Taylor Project occurred as follows:

- On April 5, 2002, Pinnacle Lands made an offer to the City of Vancouver, on behalf of itself or an affiliate company, to purchase land at 598 Taylor Street (this civic address was subsequently changed to 550 Taylor Street) (the "**Lands**").

- The City of Vancouver accepted the offer on May 14, 2002.

- On August 13, 2002, further to a request made by Mr. De Cotiis, Hancock Bruckner Eng + Wright Architects (the "**Architects**") provided a design rationale and landscape concept for the Taylor Project. The Architects proposed a 3-storey, 11-townhouse podium; a 70-metre-tall 26-storey tower containing 235 units; and 3 levels of underground parking for 258 vehicles.[2]

[2] See Exhibit A/R-1, Tab 5. Tab 4 contains a proposed unit mix.

- On August 13, 2002, on the instructions of Mr. De Cotiis, the Architects submitted a development permit application to the City of Vancouver.

- On October 15, 2002, Pinnacle Lands entered into a sales contract with the City of Vancouver in respect of the Lands. The contract defines the buyer as Pinnacle Lands and/or an affiliate company. The sales contract provides that the buyer will pay to the City of Vancouver a $5,188,000 purchase price plus a $1,054,070 community amenity contribution.[3]

- As mentioned previously, Taylor was incorporated on June 2, 2003.

- On July 15, 2003, Taylor and the Appellant formed the Partnership under a partnership agreement of the same date (the "**Partnership Agreement**"). Paragraph 37 of the PASF states that the Partnership was created to acquire the Taylor Project assets and to develop, construct and sell the project. Clause 3.1 of the Partnership Agreement states that one of the purposes for which the Partnership was formed was to "acquire the Project Assets [i.e. the Lands and related contracts], pursue all approvals required in connection with the development of the [Taylor] Project and, as soon as possible, proceed with the development, construction and financing of the [Taylor] Project and the marketing and sale of the Strata Lots or other interests in the [Taylor] Project."

- The Appellant made a $5 capital contribution in respect of its 5% Partnership interest and Taylor made a $95 capital contribution in respect of its 95% Partnership interest. Taylor borrowed $94 of the $95 from another member of the Pinnacle Group.

- On July 18, 2003, Pinnacle Lands assigned to the Partnership all of its interest in the contract with the City of Vancouver to purchase the Lands, and the Partnership assumed all associated costs and obligations.

- On July 28, 2003, the Partnership closed on the purchase of the Lands. Taylor held legal title in the Lands as bare trustee for the beneficial owner, the Partnership. The total purchase price was $6,413,994.10.[4]

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[3] Exhibit A/R-1, Tab 7.
[4] See PASF, paragraph 48 and Exhibit A/R-1, Tab 13.

- On August 28, 2003, the City of Vancouver issued a development permit for the Lands.

- On September 17, 2003, Mr. De Cotiis, representing the Partnership, authorized Anson Realty to accept offers on pre-sales of strata units.

- The Partnership, beginning in October 2003, undertook development of the Lands. It retained Mondiale to provide general contractor services to the Taylor Project.

- The Taylor Project was substantially completed by November 2005 at a total cost, including land, of $37,550,345. An occupancy permit was issued on December 16, 2005. The Taylor Project was composed of 251 condominium and townhouse units.

- The Partnership earned a profit of approximately $11.5 million on the sale of the condominium units.

[30] The total purchase price for the Lands was paid by a $1 million deposit, a $3,195,800 payment financed by the Bank of Montreal ("**BMO**") and a $2,218,194.10 payment made by the Appellant. The payment made by the Appellant was a loan from the Appellant to the Partnership. The Court was not told who provided the funds for the $1 million deposit. However, since BMO, in its term sheet for the construction financing for the project, shows the value of the Lands as the Pinnacle Group's equity in the Taylor Project,[5] I have assumed that a member of the Pinnacle Group provided the funds for the $1 million deposit.

[31] BMO provided $38.5 million of construction financing for the project. The financing did not apply to the Lands. The Partnership was the borrower and the Appellant and Taylor were partners and covenanters. Mr. De Cotiis personally, PIRG and another Pinnacle Group company (Pacific Star Properties Inc.) gave a full covering guarantee for the debt of the Partnership, Taylor and the Appellant, with their indebtedness limited to $38.5 million. In addition, BMO required PIRG to provide financial assistance to the Partnership. Mr. De Cotiis signed the term sheet for the borrowing on behalf of all parties, i.e., he signed for each company and for himself.

[32] Beginning in early 2006, Mr. De Cotiis, on behalf of PIRG, entered into negotiations with an arm's-length third party for Meston Resources Inc. ("**Meston**")

[5] See Exhibit A/R-1, Tab 36.

to acquire the shares of Taylor before the Partnership's October 31, 2006 year-end. It is clear from the evidence before me that the sole purpose of Meston acquiring the shares of Taylor was to use Meston's tax losses to avoid the payment of income tax on the portion of the Partnership's profit (approximately $11 million) that was or would be allocated to Taylor.

[33] Meston was a wholly owned subsidiary of Campbell Resources Inc. At the time of the transactions, Meston was in financial difficulty and was under CCAA protection.[6]

[34] Taylor had a fiscal year-end of September 30, while the Appellant and the Partnership had fiscal year-ends of October 31.

[35] By September 30, 2006, the Partnership had earned a net profit of $11,564,318 for its fiscal period ending on October 31, 2006. For accounting purposes, Taylor accrued 95% of this amount ($10,986,102) when calculating its income for its fiscal period ending on September 30, 2006. Taylor included the $10,986,102 as Partnership income on its income tax return for its September 30, 2006 year-end and then claimed a corresponding deduction when calculating its income for tax purposes.

[36] Taylor entered into a series of transactions (that are described in paragraphs 70 to 101 of the PASF) that resulted in Meston, which had significant tax losses, acquiring the shares of Taylor. Counsel for PIRG informed Meston in June of 2006 that PIRG could not sell the shares of the Appellant since the Appellant had ongoing business activities beyond the Partnership.[7]

[37] Before entering into transactions with Meston, Taylor, its parent company PIRG, and the Partnership took a number of steps to "clean up" intercompany accounts and to ensure that there were sufficient funds in Taylor to pay Meston an agreed fee.

[38] These steps included the following:

- On September 13, 2006, Taylor created a new class of shares, redeemable Class A preferred shares.

[6] See Exhibit A/R-1, Tab 63.
[7] See Exhibit A/R-1, Tab 58.

- On September 20, 2006, Taylor opened a bank account with BMO. Prior to this time, Taylor had no bank account.

- On September 21, 2006, PIRG deposited $11,463,959 in the Partnership's bank account. Paragraph 81 of the PASF states that this was paid "to clear out intercompany debt owing by PIRG to the Partnership." Ms. Feng testified that this intercompany debt arose on the Partnership's sale of the condominium units. The proceeds from these sales were deposited into PIRG's bank account and recorded as an intercompany loan from the Partnership to PIRG.

- On September 25, 2006, the Partnership paid a draw of $7,287,522 to Taylor. Taylor then declared a stock dividend in the same amount on its Class A preferred shares held by PIRG. PIRG then immediately redeemed the stock dividend shares and was paid $7,287,522.

- On September 26, 2006, the Partnership paid a draw of $3,774,241 to Taylor. These funds remained in Taylor's bank account until after Meston acquired Taylor.

[39] PIRG and Meston then entered into a number of transactions to effect the sale of the shares of Taylor and the allocation of 95% of the Partnership's profit to Meston, including the following:

- On October 18, 2006, PIRG as vendor and Meston as purchaser entered into a share purchase and sale agreement (the "**Share Purchase Agreement**") to sell all of the issued and outstanding shares of Taylor for a purchase price of $2,944,616, with $45,776 allocated to Taylor's common shares.

- On October 23, 2006, PIRG transferred all of the issued and outstanding shares of Taylor to Meston. Meston, through its lender, paid the $2,944,616 purchase price.

- On October 23, 2006, following the transfer of the Taylor shares, Mr. De Cotiis resigned as director and officer of Taylor and was replaced by Mr. André Fortier, the President and CEO of Meston.

- On October 24, 2006, Mr. Fortier, as director of Taylor:

    - resolved to wind up Taylor into Meston and dissolve Taylor; and

- passed a resolution for Taylor to enter into a distribution agreement with Meston to transfer its partnership interest in the Partnership to Meston.

- On October 24, 2006, the Appellant agreed to the admission of Meston to the Partnership.

- Meston was admitted to the Partnership prior to October 31, 2006.

- On October 31, 2006, the Partnership allocated 95% of it total income of $11,564,318 to Meston ($10,986,102) and 5% to the Appellant ($578,216).

- On November 9, 2006, Meston caused Taylor to be voluntarily dissolved in British Columbia. Before winding up Taylor, Meston transferred to itself all assets and liabilities of Taylor.

- On November 22, 2006, the Partnership sold the remaining unit in the Taylor Project for $180,000, realizing a profit of $79,544.

- On December 28, 2006, the Partnership dissolved, pursuant to an agreement entered into by Meston and the Appellant dated December 22, 2006.

[40] Paragraph 87(c) of the PASF states that "Mr. De Cotiis provided a personal guarantee to Meston, among any other 'purchaser's indemnified parties' (as defined in the [Share Purchase Agreement]). The guarantee states that it is being given as an inducement to Meston to enter into the [Share Purchase Agreement]". The guarantee relates to clause 4.04 of the Share Purchase Agreement, under which PIRG agrees to indemnify Meston, Taylor and their current and future shareholders, directors, officers, employees, agents, etc.

[41] The indemnification is broad with respect to obligations arising from the development of the Taylor Project and the sale of the condominium units, including any claims made under the British Columbia *Homeowner Protection Act*, S.B.C. 1998, c. 31.[8]

[42] For income tax purposes, the transactions resulted in $11,061,669 of Partnership income being allocated to Meston; this income was composed of the

[8] See Exhibit R-3.

$10,986,102 allocated at the Partnership's October 31, 2006 year-end and 95% of the $79,544 profit realized on the sale of the final unit of the Taylor Project.

[43] Taylor paid a deal fee of $829,625 (the "**Deal Fee**") to Meston, calculated as 7.5% of the taxable income of the Partnership allocated to Meston. The Deal Fee was "paid" by Taylor having the $3,774,241 discussed previously in its bank account at the time that Meston purchased its shares from PIRG for $2,944,616 ($3,774,241 − $2,944616 = $829,625).

[44] The parties state at paragraph 96 of the PASF that "the principal reason for the [Share Purchase Agreement] and Meston inheriting Taylor's 95% allocation of Partnership income may reasonably be considered to be the reduction of the tax that might otherwise have been payable under the *Income Tax Act* (Canada)".

[45] Mr. Fovenyi and Mr. De Cotiis both agreed during their testimony that, as a result of the transactions, the Pinnacle Group avoided the payment of $3.7 million in taxes.[9]

[46] When calculating its taxable income for its taxation year ending on October 31, 2006, the Appellant included $578,216 as income from the Partnership in respect of the Partnership's fiscal period ending October 31, 2006. The Minister subsequently reassessed the Appellant to include additional income from the Partnership of $10,156,477. The $10,156,477 was calculated as 95% of the Partnership's income minus the Deal Fee.

Summary of the Law

[47] The issue in this appeal is the application of subsection 103(1) and subsection 103(1.1).

[48] Subsection 103(1) reads as follows:

> Where the members of a partnership have agreed to share, in a specified proportion, any income or loss of the partnership from any source or from sources in a particular place, as the case may be, or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of any of the members thereof, and the principal reason for the agreement may reasonably be considered to be the reduction or postponement of the tax that might

[9] See Transcripts of Proceedings of November 7, 2022, page 106, and November 8, 2022, page 167, as well as Exhibit A/R-1, Tab 70.

> otherwise have been or become payable under this Act, the share of each member of the partnership in the income or loss, as the case may be, or in that other amount, is the amount that is reasonable having regard to all the circumstances including the proportions in which the members have agreed to share profits and losses of the partnership from other sources or from sources in other places.

[49] The Federal Court of Appeal in *594710 British Columbia Ltd.*[10] described subsection 103(1) as "an anti-avoidance provision which targets income-sharing agreements among partners that are made principally to reduce or postpone tax. In such a case, the income is to be shared based on what is reasonable in all the circumstances."

[50] Subsection 103(1) applies where the principal reason for the partners' agreement with respect to the sharing of income may reasonably be considered to be the reduction or postponement of the tax that may otherwise have been or become payable under the Act.

[51] If the section applies then the Court must decide the share of each member of the Partnership in the income of the Partnership that is reasonable, having regard to all the circumstances.

[52] Subsection 103(1.1) reads as follows:

> Where two or more members of a partnership who are not dealing with each other at arm's length agree to share any income or loss of the partnership or any other amount in respect of any activity of the partnership that is relevant to the computation of the income or taxable income of those members and the share of any such member of that income, loss or other amount is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members thereof or such other factors as may be relevant, that share shall, notwithstanding any agreement, be deemed to be the amount that is reasonable in the circumstances.

[53] Subsection 103(1.1) is also an anti-avoidance provision. Unlike subsection 103(1), there is no purpose test. It applies when members of a partnership who are not dealing with each other at arm's length agree to share income of the partnership in a manner that is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members or such other factors that are reasonable.

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[10] *Canada v. 594710 British Columbia Ltd*., 2018 FCA 166, at paragraph 60.

[54] Both parties agree that subsection 103(1) applies in the fact situation before the Court.

[55] In a November 3, 2022 letter to the Court, counsel for the Appellant stated the following:

> … The Appellant accepts that subsection 103(1) applies because the allocation of income to Meston Resources Inc. (having inherited Pinnacle International (Taylor) Plaza Inc.'s 95%) was principally motivated by tax.
>
> As the application of the reasonableness test as articulated under subsections 103(1) and 103(1.1) will produce the same result regardless of which subsection applies, the only remaining issue to be pursued by the Appellant in this appeal is: was the Appellant's share of the Partnership income that was allocated in respect of the Partnership's 2006 fiscal period reasonable in the circumstances?

[56] The Respondent argues that subsection 103(1.1) also applies to the fact situation before the Court. It is not clear to the Court whether the Appellant accepts that subsection 103(1.1) applies here. However, the Appellant submits that subsection 103(1) and subsection 103(1.1) will, in the fact situation before the Court, produce the same result.

[57] Regardless, as I will discuss, subsection 103(1) resolves the issue before the Court. The remainder of my reasons will focus on the application of subsection 103(1).

[58] The meaning of the word "reasonable" was addressed by my colleague Justice Owen in *Sun Life Assurance Company*.[11] He stated the following:

> [37] The definition of the word "reasonable" in the *Oxford English Dictionary* (Second Edition) that is in my view most appropriate is A.2.a: "Having sound judgement; sensible, sane. . . . Also, not asking for too much." The use of the word "raisonnables" in the French version of the provision supports this interpretation.
>
> [38] The use of a reasonableness requirement in tax legislation has been considered in other contexts. In *Bailey v. M.N.R.*, [1989] T.C.J. No. 602 (QL), 89 DTC 416, the Court stated (at page 420):
>
> > What is "reasonable" is not the subjective view of either the respondent or appellant but the view of an objective observer with a knowledge of

[11] *Sun Life Assurance Company of Canada v. The Queen*, 2015 TCC 38, at paragraphs 37 to 39.

> all the pertinent facts: *Canadian Propane Gas & Oil Limited v. M.N.R.*, 73 DTC 5019 per Cattanach J. at 5028.
>
> [39] In *Maege v. The Queen*, 2006 TCC 117, the Court adopted the general approach to determining reasonableness set out in *Tsiantoulas v. Canada*, [1994] T.C.J. No. 984 (QL), where the Court stated at paragraph 11:
>
> > Reasonableness is a question of fact and requires the application of a measure of judgement and common sense.

[59] With respect to subsection 103(1), what is reasonable is a question of fact that requires the application of a measure of judgment and common sense. The subsection provides that when determining this question of fact, one must consider all the circumstances.

[60] In short, I must consider all of the relevant facts before the Court and then make my determination as an impartial observer.

Position of the Parties

[61] The Appellant argues that the Court should focus on the Appellant and Taylor. It accepts that Meston contributed little to the activities of the Partnership.

[62] The Appellant argues that it is a foundational principle of the Act that a taxpayer is to be taxed on its own earnings and not the earnings of someone else. In the current appeal, the Appellant earned its 5% interest and nothing more.

[63] It was the clear intention of the Pinnacle Group that Mr. De Cotiis would complete all acts necessary to develop the Taylor Project on behalf of Taylor and not on behalf of the Appellant.

[64] In the Appellant's view, work performed is the key factor in this appeal. The Appellant only performed an administrative role in the Partnership and the work performed as "developer" was undertaken by Mr. De Cotiis on behalf of Taylor. As a result, the Court should accept a 95% allocation of profit to Taylor.

[65] The Respondent argues that the only reasonable allocation of the profit of the Partnership is the Deal Fee to Meston and the remainder to the Appellant. He argues that this reflects the true economic realities that Meston was paid a fee for its sole contribution to the Partnership, namely, the use of its losses, and that the remaining profit stayed with the Pinnacle Group.

[66] The Respondent argues that the Court should not consider Taylor when determining a reasonable allocation under subsection 103(1), since Taylor was not a partner on October 31, 2006, the fiscal year-end of the Partnership. Subsection 103(1) concerns only the reasonable allocation between the Appellant and Meston.

[67] However, even if Taylor is considered, the Minister's allocation is still correct. Taylor did not, and could not have, made any material contributions to the Partnership.

Disposition of the Appeal

[68] It is clear from the evidence before me that the allocation of 95% of the Partnership's income for its fiscal period ending on October 31, 2006 and the allocation of 95% of the profit realized on the sale of the final condominium unit to Meston was unreasonable.

[69] Meston joined the Partnership around October 24, 2006, after the Partnership had completed the development of the Taylor Project, its only asset, and the sale of all but one of the condominium units. At that point, the Partnership had realized over 99% of its profit.

[70] Meston was not a member of the Partnership during the period that the Partnership carried out the activities that generated the profit. It appears that the only activity that the Partnership engaged in after Meston joined the Partnership was the sale of the last remaining condominium unit.

[71] Meston did not share in the approximately $11.6 million of profit realized by the Partnership other than the $829,625 Deal Fee. Once all of the noted transactions were completed, 95% of the Partnership's profit minus the Deal Fee was paid indirectly to PIRG and the remaining 5% of the Partnership's profit was paid to the Appellant.

[72] Further, during the short period of time that it was a member of the Partnership, Meston bore little or no risks for the activities of the Partnership. Its capital risk was the $95 that it inherited from Taylor. The broad indemnities given by the Pinnacle Group and personally guaranteed by Mr. De Cotiis covered most of the potential risks that Meston faced as a general partner in the Partnership.

[73] In these circumstances, it was, as a question of fact, unreasonable to allocate 95% of the profit to Meston.

[74] The issue then becomes to whom the 95% of profit should be allocated: the Appellant, Taylor or some combination of the two.

[75] I accept the Appellant's argument that the inquiry under subsection 103(1) should include all persons who were partners during the relevant fiscal period of the Partnership. This was clearly stated by the Federal Court of Appeal in *594710 British Columbia Ltd*.[12] It stated the following at paragraph 63:

> The Tax Court decision determined that it is not within the object, spirit or purpose of subsection 103(1), by itself, to require a reallocation of income between current and former partners. In my view, this conclusion does not have due regard to the breadth of the language used in the provision. Subsection 103(1) applies when partners agree to share income in a particular way. Since income from a partnership is allocated at the end of a fiscal period based on the income for that period, subsection 103(1) must potentially apply to all persons who are partners during the fiscal period of a partnership. Accordingly, depending on the circumstances it may be unreasonable for purposes of subsection 103(1) for a partnership agreement to allocate the entire income for a fiscal period to a current partner to the exclusion of a former partner.

[76] The Appellant, unlike Taylor, is a corporation of substance. During the relevant period, it had between 21 and 32 employees. Between its inception and 2006, it was involved in 16 real estate development projects (excluding the Taylor Project).

[77] The evidence before the Court is that the Appellant, including its employees, was extensively involved in the development of the Taylor Project and the sale of the condominium units.

[78] Its first significant step was the loaning of approximately $2.2 million to the Partnership to help finance the Partnership's acquisition of the Lands. It then participated in both the development of the Taylor Project and the sale of the condominium units.

[79] Clauses 8.3, 8.4 and 8.6 of the Partnership Agreement set out certain of the Appellant's duties with respect to the Partnership. Mr. Fovenyi described the services that the Appellant provided to the Partnership as administrative services; he

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[12] *Supra*, footnote 10.

testified that the Appellant co-ordinated the administrative aspects of certain *back of the office* elements of the project. I do not agree with his testimony. The evidence before the Court is that the Appellant's activities with respect to the Taylor Project extended past administrative services. Its employees were actively involved in managing the development of the Taylor Project and the sale of the condominium units.

[80] Clauses 8.3 and 8.4 of the Partnership Agreement address services provided by the Appellant during the development and construction of the Taylor Project and during the sale of the condominium units. Employees of the Appellant provided the services set out in clauses 8.3 and 8.4 of the Partnership Agreement.[13] Under clause 8.6 of the Partnership Agreement, the Appellant was required to provide the office space and personnel necessary to carry out the objectives of the Partnership.

[81] Clause 8.3 of the Partnership Agreement, which is titled "Development Services provided by Realty [the Appellant]", sets out the Appellant's required duties with respect to the development phase of the Taylor Project, which included the following:

- co-ordinating contracts relating to the development of the project;
- co-ordinating the services of all project consultants and all other suppliers of goods and services to the project;
- as directed by Taylor, paying all insurance premiums and debts and obligations in respect of the project; and
- co-ordinating the preparation of all information required for advances under any construction financing relating to the project.

[82] It appears, on the basis of the evidence before the Court, that "co-ordinating the services of all project consultants and all other suppliers of goods and services" included an employee of the Appellant managing the Taylor Project. Mr. De Cotiis testified that an employee of the Appellant, Mr. Carlos Meola, was the project manager of the Taylor Project.

[83] Sub-contractors performed most, if not all, of the construction work for the Taylor Project. The Partnership hired the sub-contractors at the direction of Mondiale. Since the Appellant was responsible for co-ordinating the services of all

[13] Transcript of Proceedings, November 7, 2022, page 60.

project consultants and all other suppliers of goods and services to the project, I have assumed that it was responsible for directing and supervising all of the sub-contractors. My conclusion is consistent with the fact that one of the Appellant's employees managed the project. In addition, the evidence before the Court leads to the conclusion that the Appellant was the only participant in the Taylor Project that had the physical and human resources to direct and manage the project, the consultants and the sub-contractors.

[84] Clause 8.4 of the Partnership Agreement sets out certain duties that the Appellant was required to fulfill with respect to the marketing and sale of the condominium units, including:

- supervising the marketing and sale of the condominium units in accordance with the established marketing program;
- co-ordinating the completion of the sale of each condominium unit, including supervising and directing the Partnership lawyers;
- liaising with the strata corporation created in respect of the Taylor Project; and
- co-ordinating the remediation of any deficiencies and the completion of any required warranty work.

[85] Mr. De Cotiis testified that he directed the marketing efforts, working closely with Anson Realty, a third party retained by the Partnership. The fact that the Appellant was responsible under the Partnership Agreement for supervising the marketing and sale of the condominium units leads to the conclusion that Mr. De Cotiis directed the marketing efforts either on behalf of, or as an employee of, the Appellant.

[86] Mr. De Cotiis was clearly an employee of the Appellant. Between 2002 and 2006, the Appellant paid $17.8 million to Mr. De Cotiis as salary. The Appellant paid $16.7 million of this salary between 2004 and 2006.

[87] It appears from the evidence that others employees of the Appellant also supervised the marketing and sale of the condominium units, including the completion of the sale of each unit.

[88] The Appellant, as required under clause 9.1 of the Partnership Agreement, maintained the books and records of the Partnership.

[89] The Appellant also had material risk with respect to the Taylor Project. It had made a $2.2 million loan in respect of the acquisition of the Lands and was a covenanter on the BMO construction loan. Since it was a general partner in the Partnership, it also faced potential liability for the activities of the Partnership. The parties did not provide the Court with details of the Appellant's assets, but they clearly were material since it had sufficient assets to make the $2.2 million loan and pay Mr. De Cotiis millions of dollars in salary.

[90] The other partner in the Partnership, Taylor, was a shell corporation. It was a holding company formed to minimize the parent company's (PIRG's) risk with respect to the development. During the period in which the Taylor Project was developed and the condominium units sold, Taylor had no physical assets, employees, or bank accounts. Its only asset was its interest in the Partnership.

[91] Taylor did not make any significant financial contributions to the Partnership. All of the Partnership's funds were provided by either loans made by other members of the Pinnacle Group or loans made by BMO. The BMO construction loan was guaranteed by Mr. De Cotiis personally, by PIRG and by another Pinnacle Group company, Pacific Star Properties Inc.

[92] The Partnership Agreement granted Taylor broad powers to develop the Taylor Project and sell the condominium units, including:

- completion of the purchase of the Lands;
- budgets;
- the construction and development of the Taylor Project;
- the marketing program for the project; and
- the financing (including refinancing) for the project and for the architects, engineers and other consultants providing services to the Partnership.

[93] However, Taylor did not have any employees or physical assets that it could employ to carry out the development of the Taylor Project. It was completely dependent on Mr. De Cotiis to perform all of these tasks. Mr. De Cotiis testified that

Taylor constructed and developed the Taylor Project and that he performed all of these tasks on behalf of Taylor (basically as the controlling mind). Mr. Fovenyi provided similar testimony.

[94] I do not accept that Mr. De Cotiis performed all of these tasks. He may have had the final say on strategic decisions with respect to the construction and development of the Taylor Project, but, on the basis of the evidence before me, I have determined that members of the Pinnacle Group other than Taylor, employees of the Appellant, and third-party consultants and sub-contractors performed most of the actual work.

[95] As I discussed previously, I have concluded that employees of the Appellant directed and supervised the third-party consultants and sub-contractors.

[96] Mr. De Cotiis wore many hats; he testified the he was the Pinnacle Group and that he ran all of its entities. Clearly, the supervision of the operations of the various entities took up almost all of his time. The Pinnacle Group organization chart at Exhibit R-6 shows over 50 companies.

[97] When asked why Taylor had no employees, Mr. De Cotiis stated the following:

> It doesn't really need any employee … I do all the planning. I work very closely, again, with my architects, landscape, engineers … I do all that. I change plans, … you know, based on the architect and marketing people ideas and programs. I know all the subtrades and the contractors. … I used my administrative staff to just do paying the bills and, you know, and just day-to-day routine.[14]

[98] I accept that Mr. De Cotiis was very involved in the Taylor Project, but I do not accept that he performed all of the tasks required to carry out the project. He required employees to complete these tasks and the Appellant provided such employees.

[99] As I noted previously, I find, on the basis of the evidence before me, that third-party consultants and sub-contractors performed most of the work on the Taylor Project. Employees of the Appellant supervised these contractors, meaning that the Appellant supervised the construction of the Taylor Project and the sale of the condominium units. Such supervision does not constitute administrative tasks.

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[14] Transcript of proceedings, November 8, 2022, page 130.

[100] For example, Mr. De Cotiis admitted on cross-examination that an employee of the Appellant was the project manager for the Taylor Project. A project manager is not administrative staff "just paying the bills" and doing "day-to-day" stuff.

[101] The evidence before me supports a conclusion that when performing his tasks, Mr. De Cotiis was, at least part of the time, working as an employee of the Appellant, the company in his group that was supervising the construction and sale of the condominium units by third-party contractors. The fact that the Appellant paid Mr. De Cotiis a multi-million dollar salary during the relevant periods supports my conclusion. Taylor paid Mr. De Cotiis no salary during this period.

[102] In summary, the Appellant, through its employees, including Mr. De Cotiis, was the entity that the Pinnacle Group used to carry out its development projects, including the Taylor Project. The Partnership used the Appellant's employees, its bank accounts, its physical premises and its experience working on 16 projects to complete the Taylor Project. It did not use or rely on Taylor.

[103] Taylor was a shell company with no physical presence, no employees and no bank accounts. It was inserted into the Partnership solely for the purpose of protecting the liability of PIRG, the parent company; the Appellant; and other members of the Pinnacle Group.

[104] Notwithstanding this purpose, Taylor bore little or no risk during the development of the Taylor Project, simply because it had no material assets to put at risk. Its only asset was its $95 contribution to the Partnership.

[105] The principal risk to the Pinnacle Group from the Taylor Project was the guarantees of the BMO loans given by Mr. De Cotiis, PIRG, the Appellant and Pacific Star Properties Inc.

[106] Another relevant factor, although not determinative, is the fact that Taylor was not a member of the Pinnacle Group on October 31, 2006, the year-end of the Partnership. At that point in time, it was a subsidiary of Meston. As discussed previously, Meston was not involved with the Taylor Project.

[107] Once subsection 103(1) applies, the Act creates a statutory fiction. The profit of the Partnership is not allocated as set out in the Partnership Agreement. The statutory fiction requires the allocation of profit to be determined based on what is reasonable having regard to all circumstances.

[108] After considering all of the facts before me, I have concluded that, under subsection 103(1), a reasonable allocation of the Partnership profit is the allocation made by the Minister, namely the allocation to the Appellant of 95% of the Partnership income minus the Deal Fee—in short, an allocation of the vast majority of the profit to the only partner who actively participated in the Taylor Project.

[109] For the foregoing reasons, the appeal is dismissed with costs.

Signed at Halifax, Nova Scotia, this 30th day of November 2023.

"S. D'Arcy"

D'Arcy J.

APPENDIX A

2017-231(IT)G

TAX COURT OF CANADA

BETWEEN:

PINNACLE INTERNATIONAL REALTY GROUP II INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

PARTIAL AGREED STATEMENT OF FACTS

The parties agree to the following facts for the hearing of this appeal. Nothing in this agreement prevents either party from presenting evidence, or the Respondent from relying on assumptions, to the extent they are not inconsistent with the facts below.

Pinnacle International Group, PIRG and Mr. De Cotiis

1. The Pinnacle International group of companies, which is known as "Pinnacle International", (**Pinnacle International Group**) is a Canadian real estate developer and has successfully completed numerous real estate development projects.

2. The founding and controlling shareholder of Pinnacle International Group is Mr. Michael De Cotiis, an individual with extensive real estate development and real estate investment industry experience.

3. On September 29, 1993, Pinnacle International Realty Group Inc. (**PIRG**) was incorporated.

4. At all material times, PIRG was the parent and primary holding company for Pinnacle International Group.

5. Mr. De Cotiis was the 100% shareholder and only director of PIRG.

The Appellant

6. On January 11, 1994, the Appellant was incorporated.

7. The Appellant is a Canadian controlled private corporation which has a head office and principal place of business in British Columbia.

8. The Appellant is engaged in the real estate development business and other related activities.

9. The Appellant is a member of the Pinnacle International Group.

10. The Appellant is a wholly-owned subsidiary of PIRG. Mr. De Cotiis is its only director.

11. From 2001 to 2006, the Appellant had the following number of employees: 21 (2001); 19 (2002); 24 (2003 and 2004); 28 (2005); and 32 (2006).

12. The Appellant has been involved in 16 other real estate development projects from inception to 2006.

13. The Appellant's fiscal period end was October 31.

Mondiale and Pinnacle Lands

14. On December 30, 1997, 556646 British Columbia Ltd. was incorporated.

15. 556646 British Columbia Ltd. subsequently changed its name to Mondiale Development Ltd. (**Mondiale**).

16. Mondiale is a wholly-owned subsidiary of PIRG. Mondiale provides general contractor services for Pinnacle International Group development projects.

17. Mondiale's only director was Mr. De Cotiis.

18. For 2001 to 2010, the Appellant paid the salary for Carlo Meola, Mondiale's project manager.

19. On July 6, 2001, 631639 BC Limited was incorporated.

20. 631639 BC Limited subsequently changed its name to Pinnacle International Lands Inc. (**Pinnacle Lands**).

21. Pinnacle Lands is a wholly owned subsidiary of PIRG. Mr. De Cotiis was its only director and it had no employees from 2001 to 2006.

The Taylor Project

22. In the spring of 2002, the owner of 598 Taylor Street, Vancouver, British Columbia (the **Taylor Property**) was the City of Vancouver.

23. The civic address of the Taylor Property subsequently changed to 550 Taylor Street.

24. The Pinnacle International Group identified the Taylor Property as the potential site for the construction of a residential tower (the **Taylor Project**).

25. On April 5, 2002, Pinnacle Lands made an offer to the City of Vancouver, on behalf of itself and/or an affiliate company, to purchase the Taylor Property as part of a tender process.

26. On May 14, 2002, the City of Vancouver accepted the offer from Pinnacle Lands and/or an affiliate company to purchase the Taylor Property and advised that it would prepare the final sale contract for execution.

27. On August 13, 2002, further to a request made by Mr. De Cotiis, Hancock Bruckner Eng + Wright Architects provided a Design Rationale and Landscape concept for the Taylor Property.

28. On August 13, 2002, on the instruction of Mr. De Cotiis, a development permit application was submitted to the City of Vancouver for the Taylor Property by Hancock Bruckner Eng + Wright Architects.

29. On October 10, 2002, the Pinnacle International Group hired electrical and mechanical professional services for the Taylor Project.

30. On October 15, 2002, a sales contract was entered into in respect of the Taylor Property with the City of Vancouver.

31. On February 17, 2003, a letter of intent was submitted to Anson Realty Limited, the real estate marketing company typically used by the Pinnacle International Group, by Bullock Realty Services Ltd., an unrelated party, for the pre-purchase of Block 17 (consisting of 33 units) of the Taylor Property development.

Taylor

32. On June 2, 2003, Pinnacle International (Taylor) Plaza Inc. (**Taylor**) was incorporated.

33. Taylor was a wholly-owned subsidiary of PIRG.

34. Taylor's fiscal period end was September 30.

35. Mr. De Cotiis was appointed sole director of Taylor upon its incorporation. Mr. De Cotiis also served as Taylor's President and Secretary. Taylor did not have any other directors, officers or employees at any material time.

The Partnership

36. On July 15, 2003, PIRG caused its wholly-owned subsidiaries, the Appellant and Taylor, to form the Pinnacle Taylor Development Partnership (**Partnership**) under a partnership agreement dated July 15, 2003 (**Partnership Agreement**).

37. The Partnership was created to acquire the Taylor Project assets and to develop, construct and sell the project.

38. Taylor borrowed $94 from another related Pinnacle International Group entity.

39. Each partner contributed its initial capital to the Partnership in accordance with the Partnership Agreement.

40. The Appellant contributed $5 and Taylor contributed $95 to the capital of the Partnership.

41. From its inception to 2006, the Appellant has been in 11 other Pinnacle International Group real estate development projects as the partner with the 5% interest in the partnership.

Development, financing and sales

42. On July 18, 2003, Pinnacle Lands assigned to the Partnership all its interest in the contract with the City of Vancouver to purchase the Taylor Property, and the Partnership assumed all associated costs and obligations. The City of Vancouver was notified of the assignment and assumption.

43. The Partnership held beneficial title to the Taylor Property.

44. On July 21, 2003, the Partnership appointed Taylor as bare trustee to hold legal title to the Taylor Property.

45. On July 23, 2003, a Residential Builder License and Application was submitted to the Homeowner Protection Office. Taylor was shown as "developer", and Mr. De Cotiis was shown as "licensee (director nominee)". On July 30, 2003, the Homeowner Protection Office approved the application.

46. On July 25, 2003, Anson Realty advised Bullock Realty that they could proceed with a formal agreement for Bullock Realty's pre-purchase of Block 17 of the Taylor Property development if the revised terms were agreeable.

47. On July 28, 2003, the Partnership closed on the purchase of the Taylor Property with the City of Vancouver.

48. The total purchase price for the Taylor Property was $6,413,994.10 and it was paid as follows:

    a. $1,000,000.00 deposit;

    b. $3,195,800.00 financed by Bank of Montreal (**BMO**); and

c. A cheque drawn on the Appellant's bank account for $2,218,194.10. which was an intercompany loan to the Partnership.

49. Mondiale was engaged by the Partnership to provide general contractor services to the Taylor Project.

50. On August 28, 2003, the City of Vancouver issued the development permit for the Taylor Property.

51. A disclosure statement was filed for the Taylor Project dated August 29, 2003.

52. On September 17, 2003, Mr. De Cotiis, representing the Partnership, sent a letter to Anson Realty authorizing it to accept offers on pre-sales of strata units.

53. Construction began in October 2003, and the Partnership undertook development of the Taylor Property in compliance with that development permit.

54. On December 9, 2003, BMO approved construction financing for the Taylor Project.

55. Under the construction financing, the Partnership was the borrower and Taylor and the Appellant were partners and covenantors.

56. On January 12, 2004, Mr. De Cotiis, as sole director of Taylor, passed a resolution requesting BMO to lend $38.5 million to the Partnership.

57. Under the construction financing, Mr. De Cotiis personally, PIRG, and another Pinnacle International Group company (Pacific Star Properties Inc.), gave a full covering guarantee for the debt of the Partnership, Taylor and the Appellant, with their indebtedness limited to $38.5 million.

58. BMO agreed to the $38.5 million request on the condition that PIRG provide financial assistance to the Partnership.

59. An amended disclosure statement was filed for the Taylor Project dated February 26, 2004.

60. As of June 30, 2005, there was only one unsold unit in the Taylor Project (Unit 505-550 Taylor Street; also referred to as strata lot 57) (the **Remaining Unit**).

61. In November 2005, the Taylor Project was substantially completed.

62. The Taylor Project residential high-rise consisted of 251 condo and townhouse units.

63. The total Taylor Project cost, including land cost, was $37,550,345.

64. On December 16, 2005, an occupancy permit was issued for all units in the Taylor Project.

65. By September 2006, the Partnership had earned net profit of $11,564,318 for the fiscal period ending October 31, 2006.

66. Taylor's 95% share of the Partnership earnings was projected in the amount of $10,986,102.

67. In respect of Taylor's fiscal period ending September 30, 2006, accrued Partnership income of $10,986,102 was allocated to Taylor for accounting purposes.

68. In filing its income tax return for the taxation year ending September 30, 2006, Taylor reported partnership income of $10,986,102 on its income statement and a corresponding deduction in computing its income for tax purposes.

69. By September 2006, the Remaining Unit remained unsold.

Meston enters the Partnership

70. Meston Resources Inc. (**Meston**) was a wholly-owned subsidiary of Campbell Resources Inc. (**Campbell**). Andre Y. Fortier was the CEO of Campbell and Meston.

71. By September 29, 2005, Campbell had hired Financial Solutions Inc. (**FSI**), a fiscal expert, to recover tax losses from Meston.

72. On February 13, 2006, Michael De Cotiis, on behalf of PIRG, signed a confidentiality agreement with FSI.

73. On or around February 20, 2006, tax counsel for PIRG also agreed to the confidentiality agreement with FSI.

74. In April 2006, lawyers for Meston and PIRG began drafting, exchanging, and revising letters of intent.

75. On June 5, 2006, a lawyer for PIRG informed lawyers for Meston that the 5% partner (the Appellant) could not be sold as part of the transaction because it had ongoing business activities beyond the Partnership, but assurances concerning the post-closing management and wind-up of the Partnership could be provided through the letter of intent.

76. On or around June 29, 2006, the controlling mind of FSI sought financing for Meston for the acquisition of the shares of Taylor. The loan was anticipated to be for five business days.

77. On September 8, 2006, a lawyer for PIRG provided lawyers for Meston with a draft step memo and deal calculation.

78. The deal calculation provided for a deal fee of $829,625 calculated as 7.5% of the taxable income.

79. On September 13, 2006, Taylor amended its corporate share structure to create an unlimited number of Class A preferred shares. Issued preferred shares were redeemable and retractable for $1 and had a par value of $1 per share.

80. On September 20, 2006, Taylor opened a bank account with BMO with a zero balance. Prior to this Taylor had no bank account.

81. On September 21, 2006, PIRG deposited a cheque for $11,463,958.81 to the Partnership's bank account to clear out intercompany debt owing by PIRG to the Partnership.

82. On September 25, 2006, a lawyer for PIRG informed a lawyer for Meston that they did not want any provision in the agreement between PIRG and Meston which would

indicate that the process of winding up the Partnership has commenced as it would not be an appropriate condition to closing.

83. On September 25, 2006, PIRG subscribed for 10 additional common shares of Taylor for $45,776. This was paid by setoff against a debt Taylor owed to PIRG for prior year capital taxes that PIRG paid on behalf of Taylor.

84. On September 25, 2006, the following transactions occurred:

a. Taylor took a draw of $7,287,522 from the Partnership;

b. Funds in this amount were deposited into Taylor's bank account;

c. Taylor declared stock dividends of 7,287,522 Class A preferred shares having an aggregate redemption price and fair market value of $7,287,522;

d. PIRG redeemed the stock dividend shares; and

e. PIRG was paid the redemption price of $7,287,522 in cash.

85. On September 26, 2006, Taylor took a draw of $3,774,241 from the Partnership and funds in this amount were deposited into Taylor's bank account on that date. Taylor then declared stock dividends of 2,898,840 Class A preferred shares having an aggregate redemption price and fair market value of $2,898,840. The cash of $3,774,241 remained in Taylor's account until after Meston acquired Taylor.

86. On October 18, 2006, the Partnership transferred legal title to the Remaining Unit from Taylor, as bare trustee, to the Appellant, as bare trustee.

87. On October 18, 2006, PIRG, as vendor, and Meston, as purchaser, entered into a share purchase and sale agreement to sell all the issued and outstanding shares of Taylor (**SPA**), and agreed, in part, as follows:

a. The share purchase would close on October 23, 2006, at 10 a.m. (Vancouver time);

b. The aggregate purchase price was $2,944,616, with $45,776 allocated to Taylor's common shares and $2,898,840 allocated to Taylor's preferred shares;

c. Mr. De Cotiis provided a personal guarantee to Meston, among any other "purchaser's indemnified parties" (as defined in the SPA). The guarantee states that it is being given as an inducement to Meston to enter into the SPA; and

d. Projected income for tax purposes to be allocated to Taylor from the Partnership, for all its fiscal periods, was $11,016,669, composed of $10,986,102 (earned up to October 31, 2006) and $75,567 (95% of projected earnings from the Remaining Unit on November 21, 2006).

88. On October 20, 2006, Mr. De Cotiis, as sole director of Taylor, approved a resolution for Taylor to guarantee to the lender in respect of the lender's loan of $2,944,616 to Meston on the share purchase price of the SPA.

89. Taylor filed an income tax return for the fiscal period October 1 to 22, 2006, reporting nil income.

90. Taylor's pro-forma income statement for October 23, 2006 reported Taylor's accrued share of Partnership income of $10,986,102.

91. October 23, 2006 was the closing date for the SPA, and, in part, the following occurred:

a. Meston borrowed $2,944,616 from its lender to pay the purchase price for the shares of Taylor;

b. Meston and the lender anticipated that the loan would be repaid promptly;

c. Lender's counsel, Fraser Milner Casgrain LLP, transferred funds representing loan proceeds in the amount of $2,944,616 to PIRG's counsel, McCarthy Tétrault LLP (**McCarthy Tétrault**), by certified cheque, in exchange for shares of Taylor;

d. PIRG transferred all the issued and outstanding common and preferred shares of Taylor to Meston;

e. PIRG directed its counsel, McCarthy Tétrault, to hold funds in trust in the amount of $75,452.14 and to pay these funds to Meston upon closing of the share purchase and sale. These funds represent loan expenses incurred by Meston; and

f. Funds now belonging to Taylor in the amount of $3,291,770.53 were released by McCarthy Tétrault.

92. On October 23, 2006, following the completion of the SPA, Mr. De Cotiis resigned as director and officer of Taylor and Mr. Fortier, the President and CEO of Meston, became director of Taylor.

93. On October 24, 2006:

a. Mr. Fortier, as director of Taylor, resolved to wind-up Taylor into Meston and dissolve Taylor;

b. Mr. Fortier, as director of Taylor, passed a resolution for Taylor to enter into a distribution agreement with Meston to transfer its partnership interest in the Partnership to Meston; and

c. The Appellant agreed to the admission of the new partner (Meston) in the Partnership.

94. On October 25, 2006, counsel for PIRG released the aggregate share purchase price of $2,944,616 to PIRG, and those funds were deposited into its bank account.

95. In respect of the Partnership's fiscal period ending October 31, 2006, the Partnership's income was allocated to Meston (previously Taylor) and the appellant as follows:

	Meston	*Appellant*	*Total*
Income allocation - %	95%	5%	100%
Income allocation - $	$10,986,102	$578,216	$11,564,318

96. The principal reason for the SPA and Meston inheriting Taylor's 95% allocation of Partnership income may reasonably be considered to be the reduction of the tax that might otherwise have been payable under the *Income Tax Act* (Canada) (**ITA**).

97. On November 9, 2006, Meston caused Taylor to be voluntarily dissolved in British Columbia. Before winding up Taylor, Meston transferred to itself all assets and liabilities of Taylor, including Taylor's interest in the Partnership.

98. On November 22, 2006, the Partnership sold the Remaining Unit to Carlo Meola, the project manager for Mondiale, for $180,000, realizing $79,544 of income.

99. Subsequent to its October 31, 2006 fiscal period end, the Partnership's remaining receivables and payables were collected and paid.

100. Meston and the Appellant entered into a partnership Termination Agreement dated December 22, 2006, whereby they agreed to dissolve the Partnership on December 28, 2006.

101. On December 28, 2006, the Partnership dissolved.

The Appellant's (Re)assessment history

102. In filing its income tax return for the taxation year ending October 31, 2006, the Appellant included, in computing income, the amount of $578,216 as income from the Partnership in respect of the Partnership's fiscal period ending October 31, 2006 and, after deducting expenses, reported a net income of $3,727. In computing its taxable income, the Appellant deducted a non-capital losses from prior years of $3,727.

103. The Minister of National Revenue (**Minister**) issued a Notice of Reassessment dated February 11, 2015 in respect of the Appellant's taxation year ending October 31, 2006 (the **Reassessment**).

104. By the Reassessment, the Minister included additional partnership income of $10,156,477 in the Appellant's income for its taxation year ending October 31, 2006.

105. $10,156,477 represents the amount of Partnership income allocated to Meston for the Partnership's fiscal period ending October 31, 2006, net of gross profit realized by Meston upon its purchase of the shares of Taylor, computed as follows:

Cash remaining in Taylor's bank account upon purchase by Meston	$3,774,241
Aggregate purchase price for Taylor shares	($2,944,616)
Meston's profit on purchase of Taylor shares	**$829,625**
95% of Partnership income	$10,986,102
Meston's profit on purchase of Taylor shares	($829,625)
Reassessed additional partnership income	**$10,156,477**

106. On May 12, 2015, the Appellant served on the Minster a Notice of Objection to the Reassessment pursuant to subsection 165(1) of the ITA.

[Agreed facts continue on the following page]

107. The Minister issued a Notice of Confirmation dated October 14, 2016 in respect of the Reassessment.

DATED at the City of Vancouver, the Province of British Columbia, October 26, 2022.

ATTORNEY GENERAL OF CANADA

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COURT FILE NO.:	2017-231(IT)G
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PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	November 7–9, 2022
REASONS FOR JUDGMENT BY:	The Honourable Justice Steven K. D'Arcy
DATE OF JUDGMENT:	November 30, 2023

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Counsel for the Respondent:	Whitney Dunn Alexander Wind Erin Krawchuk

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