

Docket: 2012-2361(IT)G

BETWEEN:

DONALD G. MacKAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 20, 2014, at London, Ontario

Before: The Honourable Justice Judith M. Woods

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Christopher Kitchen

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**JUDGMENT**

It is ordered that the appeal with respect to an assessment made under the *Income Tax Act* for the 2006 taxation year is dismissed. Costs are awarded to the respondent.

Signed at Ottawa, Ontario, this 30<sup>th</sup> day of January 2014.

“J.M. Woods”

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Woods J.

Citation: 2014 TCC 33  
Date: 20140130  
Docket: 2012-2361(IT)G

BETWEEN:

DONALD G. MacKAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Woods J.

[1] Donald MacKay commenced private practice as a dentist in 1976. This appeal under the *Income Tax Act* concerns the computation of Dr. MacKay's dentistry income for the 2006 taxation year, and in particular the income adjustments required by section 34.1 of the *Act*.

[2] Section 34.1 is intended to limit the tax deferral that would otherwise be available to an individual who has a fiscal period for a business that does not coincide with the calendar year. Dr. MacKay is subject to this provision because the fiscal year end for his dentistry practice is January 31 and he made an election under subsection 249.1(4) of the *Act* to retain this fiscal period for purposes of the *Act*.

[3] Dr. MacKay does not dispute the computation required by section 34.1 but questions whether the provision is enforceable. He submits that the provision is harsh in his particular circumstances, and he suggests that he is treated differently from individuals who have a calendar year end for their fiscal period.

Discussion

[4] The conclusion that I have reached is that Dr. MacKay's argument is flawed because he has only taken a snapshot of dentistry income for one taxation year. In order to accurately determine whether the result is harsh, the dentistry income for the immediately preceding taxation year and the subsequent taxation year also needs to be considered. By this approach, it appears that Dr. MacKay actually received a partial deferral of tax in an earlier taxation year that was adjusted in the taxation year at issue. I am not persuaded that the result is harsh, as he has argued.

[5] The dentistry income that Dr. MacKay earned for the fiscal periods ended January 31, 2005, January 31, 2006 and January 31, 2007 was \$235,324, \$393,134 and \$352,979, respectively.

[6] By a combination of section 9 and section 34.1, the parties agree that Dr. MacKay is required to include dentistry income for the 2006 taxation year (the calendar year) in the amount of \$538,130, provided that section 34.1 is enforceable. This far exceeds any income that was earned for any 12-month period.

[7] The calculation that they provided is set out below.

- (a) Include income for 2006 fiscal period - \$393,124
- (b) Include 11/12 of income for 2006 fiscal period - \$359,744
- (c) Deduct 11/12 of income for 2005 fiscal period - \$214,749
- (d) Net income inclusion - \$538,130.

[8] Section 34.1 relates to the amounts in (b) and (c) above. In essence, taxpayers who are subject to this provision are required to add a notional amount of income for the portion of the following fiscal period that ends on December 31. In Dr. MacKay's case, this relates to income earned in the period from February 1, 2006 to December 31, 2006. The notional amount is based on a pro-ration of income for the immediately preceding fiscal period (see (b) above).

[9] In order to prevent double taxation, the notional amount that was included in income for one taxation year is deducted from income in the following taxation year (see (c) above). Accordingly, although there may be timing differences, the notional amount is not ultimately subject to tax.

[10] The result of the application of section 34.1 appears to be that income may be temporarily over-estimated (where income decreases) or under-estimated (where

income increases). However, as mentioned the difference is adjusted in the following taxation year.

[11] In the 2006 taxation year which is at issue in this appeal, the income for tax purposes is extremely high relative to the actual income earned for any 12-month period.

[12] There appears to be two reasons for this. First, Dr. MacKay's income rose dramatically in the fiscal period ended January 31, 2006. Second, Dr. MacKay's income decreased in the fiscal period ended January 31, 2007. The rise in income caused the notional amount to be low in the 2005 taxation year and resulted in a large amount of income to be added in the 2006 taxation year. The decrease in income for the following year also resulted in the notional amount for the 2006 taxation year to be high. In effect, Dr. MacKay's income for the 2006 taxation year was buffeted from income earned before and after that year.

[13] I am not satisfied that the result is harsh in this particular case. On the contrary, Mr. MacKay seems to have benefited from a tax deferral in the 2005 taxation year relative to individuals whose businesses have calendar year ends. I fail to see how the result is harsh.

[14] In this case, Dr. MacKay has not alleged that any income has been subject to double tax or that the result is not in accordance with the provisions of the *Act*. Even if I were satisfied that the result is harsh, which I do not, this would not be a basis on which I could grant relief. In this regard, it is well-established that this Court cannot grant relief on grounds only that the result is harsh: *Lans v The Queen*, 2011 FCA 290.

[15] The appeal will be dismissed, with costs.

Signed at Ottawa, Ontario, this 30<sup>th</sup> day of January 2014.

“J.M. Woods”

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Woods J.

CITATION: 2014 TCC 33

COURT FILE NO.: 2012-2361(IT)G

STYLE OF CAUSE: DONALD G. MacKAY, AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: January 20, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: January 30, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Christopher Kitchen

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:

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