

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20100119**

**Docket: A-151-09**

**Citation: 2010 FCA 18**

**CORAM: NADON J.A.  
EVANS J.A.  
STRATAS J.A.**

**BETWEEN:**

**DONALD IAN MOYES**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on January 19, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on January 19, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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**HER MAJESTY THE QUEEN**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on January 19, 2010)**

**NADON J.A.**

[1] This is an appeal from a decision of Madam Justice Wood of the Tax Court of Canada, dated March 12, 2009, 2009 TCC 146, which dismissed the appellant's appeal from the Minister of Revenue's (the "Minister") reassessments of his 2004, 2005, 2006 and 2007 taxation years.

[2] During the years at issue, the appellant received distributions of income from foreign investment corporations. In filing his income tax returns for the years at issue, the appellant took the position that a certain portion of the amounts received by him was of a capital nature and thus

taxable as capital gain. The amounts received by the appellant were amounts earned by the foreign corporations and paid to him on a *pro rata* basis per unit or share owned. None of the amounts received by the appellant resulted from the disposal of shares or units in these corporations.

[3] The Minister reassessed the appellant and included in his taxable income the full amount of the distributions as dividends and other investments. In reassessing the appellant, the Minister relied, *inter alia*, on section 90 and paragraph 12(1)(k) of the *Income Tax Act*, R.S.C. 1985, c. 1.

[4] The Judge dismissed the appellant's appeal because she was of the view that the Minister was correct in treating the foreign distributions of income to the appellant as dividends. In her view, there was no basis upon which the distributions could be treated as capital gains for tax purposes.

[5] In so concluding, the Judge indicated that she could not accept the appellant's submission that the foreign entities from which the appellant received the distributions were not corporations and that flow-through treatment should apply to capital gains realized because the funds acted in an agency capacity. In her view, there was no evidence to support the appellant's assertions.

[6] We are satisfied, in the light of the evidence and the applicable law, that the Judge made no error which would justify intervention on our part.

[7] The appeal will therefore be dismissed with costs.

"M. Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-151-09

**(APPEAL FROM A JUDGMENT OR ORDER OF MADAM JUSTICE WOODS, OF THE TAX COURT OF CANADA, DATED MARCH 12, 2009, DOCKET NO. 2008-2830 (IT) I)**

**STYLE OF CAUSE:** DONALD IAN MOYES v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 19, 2010

**REASONS FOR JUDGMENT  
OF THE COURT BY:** (NADON, EVANS & STRATAS  
J.J.A.)

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

Donald Ian Moyes FOR THE APPELLANT  
(SELF-REPRESENTED)

Diana Aird FOR THE RESPONDENT  
Donna Dorosh

**SOLICITORS OF RECORD:**

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