

Docket: 2005-3320(IT)G

BETWEEN:

HUYEN-ANH NGUYEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on common evidence with the appeals of  
**Isabelle Vohoang (2005-3322(IT)G), Fabrice Vohoang (2005-3323(IT)G) and  
Alexandre Vohoang (2005-3324(IT)G),**  
on June 7 and 8, 2010, at Montréal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant:           Guy Matte  
Counsel for the respondent:         Simon-Nicolas Crépin

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**JUDGMENT**

The appeals from the assessments under the *Income Tax Act* for the 1988, 1990, 1991, 1992 and 1993 taxation years are allowed with one bill of costs and the assessments are vacated, in accordance with the attached Reasons for Judgment.

Signed this 12th day of November 2010.

“François Angers”

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Angers J.

Translation certified true  
on this 19th day of January 2011

François Brunet, Revisor

Docket : 2005-3322(IT)G

BETWEEN:

ISABELLE VOHOANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on common evidence with the appeals of  
**Huyen-Anh Nguyen (2005-3320(IT)G), Fabrice Vohoang  
(2005-3323(IT)G) and Alexandre Vohoang (2005-3324(IT)G),**  
on June 7 and 8, 2010, at Montréal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant:           Guy Matte  
Counsel for the respondent:         Simon-Nicolas Crépin

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**JUDGMENT**

The appeals from the assessments under the *Income Tax Act* for the 1988, 1990, 1991, 1992 and 1993 taxation years are allowed with one bill of costs and the assessments are vacated, in accordance with the attached Reasons for Judgment.

Signed this 12th day of November 2010.

“François Angers”

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Angers J.

Translation certified true  
on this 19th day of January 2011

François Brunet, Revisor

Docket: 2005-3323(IT)G

BETWEEN:

FABRICE VOHOANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on common evidence with the appeals of  
**Huyen-Anh Nguyen (2005-3320(IT)G), Isabelle Vohoang (2005-3322(IT)G)**  
**and Alexandre Vohoang (2005-3324(IT)G),**  
on June 7 and 8, 2010, at Montréal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant:       Guy Matte  
Counsel for the respondent:       Simon-Nicolas Crépin

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**JUDGMENT**

The appeals from the assessments under the *Income Tax Act* for the 1988, 1990, 1991, 1992 and 1993 taxation years are allowed with one bill of costs and the assessments are vacated, in accordance with the attached Reasons for Judgment.

Signed this 12th day of November 2010.

“François Angers”

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Angers J.

Translation certified true  
on this 19th day of January 2011

François Brunet, Revisor

Docket: 2005-3324(IT)G

BETWEEN:

ALEXANDRE VOHOANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on common evidence with the appeals of  
**Huyen-Anh Nguyen (2005-3320(IT)G), Isabelle Vohoang (2005-3322(IT)G),  
and Fabrice Vohoang (2005-3323)**  
on June 7 and 8, 2010, at Montréal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant:           Guy Matte  
Counsel for the respondent:         Simon-Nicolas Crépin

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**JUDGMENT**

The appeals from the assessments under the *Income Tax Act* for the 1988, 1990, 1991, 1992 and 1993 taxation years are allowed with one bill of costs and the assessments are vacated, in accordance with the attached Reasons for Judgment.

Signed this 12th day of November 2010.

“François Angers”

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Angers J.

Translation certified true  
on this 19th day of January 2011

François Brunet, Revisor



Citation: 2010 TCC 503  
Date: 20101112  
Dockets: 2005-3320(IT)G,  
2005-3322(IT)G, 2005-3323(IT)G,  
2005-3324(IT)G

BETWEEN:

HUYEN-ANH NGUYEN,  
ISABELLE VOHOANG,  
FABRICE VOHOANG,  
ALEXANDRE VOHOANG,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Angers J.

[1] These are four appeals that were heard on common evidence. At the request of the appellants' representative, the notices of appeal in the four cases were amended when the hearing commenced, so that would be included a reference to an additional life insurance policy from a group insurance policy, the beneficiary of which is the appellant Huyen-Anh Nguyen.

[2] By notice of assessment dated December 23, 2003, the Minister of National Revenue (the Minister) assessed the appellants Huyen-Anh Nguyen and Isabelle Vohoang in the amount of \$200,000 each, under subsection 159(3) of the *Income Tax Act* (the Act). As to the appeal by Isabelle Vohoang, she was also assessed on the same date in the amount of \$120,000, under subsection 160(1) of the Act. The appellants Fabrice and Alexandre Vohoang were assessed on the same date in the amount of \$40,000 each, under subsection 160(1) of the Act. After the

objections were served, the Minister confirmed all the assessments described above, on June 21, 2005.

[3] All of the assessments in question were made after a series of events that occurred after the sudden death of Hien Vohoang on June 14, 1993. Hien Vohoang was the husband of the appellant Huyen-Anh Nguyen and the father of the other three appellants. Fabrice and Alexandre were minor children at that time.

[4] Hien Vohoang had a doctorate in science, giving him the designation of electrical engineer, and also a doctorate in electronic physics and a bachelor's degree in physics. He operated a number of scientific research companies that were primarily involved in designing, manufacturing and marketing graphics/multimedia processors. SPEQ Multimedia Inc. and Six Graph Informatique Ltée seem to be the two companies operated by Hien Vohoang that are most relevant to this case, although another company, Zuriq Corp, played a relatively important role in creating a number of partnerships used as tax shelters.

[5] Hien Vohoang was reassessed for his 1988, 1990, 1991, 1992 and 1993 taxation years. The evidence is that his tax debt for the five taxation years in question amounted to \$71,501.21, in addition to penalties of \$2,090.18 for the 1988 taxation year and interest in the amount of \$197,438.39 on the total amount, for a total of \$271,029.78 on December 23, 2003. Hien Vohoang objected to the assessments for the 1987 to 1990 taxation years, but they were confirmed by the Minister, or vacated after reassessments were made. When the hearing commenced, counsel for the appellants informed the Court that he was no longer contesting the assessments of the late Hien Vohoang, except in respect of the limitation period for recovering a taxpayer's tax debt. Regarding the dates on which the 1988, 1990, 1991 and 1992 assessments were made concerning the late Hien Vohoang or his estate, counsel for the appellants submitted that six years had passed between the date of the last assessment of Hien Vohoang and the date of the assessment of the appellants, and accordingly the tax debt of the late Hien Vohoang was unrecoverable.

[6] Hien Vohoang died intestate, leaving his wife and three children as heirs. According to Exhibit A-4, the four heirs of the late Hien Vohoang, represented by Huyen-Anh Nguyen (who signed for the three children), made a payment proposal on June 12, 1995, under article 811 of the *Civil Code of Québec*. The payment proposal shows that the estate of the late Hien Vohoang was in deficit and had debt totalling \$421,395.52. The assets included half of the family home, with a value of \$221,750, investments with Canada Trust with a value of \$18,348.51, an RRSP in the amount of \$33,701.44 and corporate investments with a value of

\$57,601 in companies operated by Mr. Vohoang. The creditors included the wife of the late Hien Vohoang in the amount of \$81,000, Revenu Québec and Revenue Canada in the amounts of \$108,068 and \$85,733, respectively, and creditors of the companies owned by the late Hien Vohoang, who had guaranteed loans in the amount of \$482,000. Nothing came of that proposal, in the sense that it was never homologated by a court. Ultimately, it related only to payment of the lawyer's and notary's fees in connection with the estate.

[7] At the time of his death, Hien Vohoang held a life insurance policy with NN Life Insurance Company of Canada in the amount of \$317,936.25, payable on his death. His wife and three children were the designated beneficiaries. Ms. Nguyen and her daughter Isabelle each received their share of the life insurance on August 30, 1993 (Exhibit A-7) by cheque in the amount of \$80,137.46. The two other appellants' shares had to be paid to a trustee, given that they were both minors. On October 31, 1993, once the formalities had been completed, two cheques were issued to the order of Ms. Nguyen in her capacity as "Guardian of Alexandre and Guardian of Fabrice", respectively, in the amount of \$80,411.84, including interest. The two cheques were deposited on November 5, 1993, at the Caisse populaire Desjardins de Cartierville, in the children's respective accounts, which operated under Ms. Nguyen's authority.

[8] The proceeds of a second life insurance policy, under a group insurance policy issued by Aetna Insurance Company, in the amount of \$47,000, was paid to the wife of the late Hien Vohoang as designated beneficiary. It is not disputed that the proceeds of the two insurance policies are not part of the assets of the estate.

[9] In the documents collected during the investigation by the Canada Revenue Agency there is a reproduction of debits and credits to an account at the Royal Bank of Canada in the name of the estate of Hien Vohoang, in which the first transactions are dated September 7, 1993. The evidence is that the account was opened by the appellant Isabelle Vohoang. She was 20 years old at the time, and was a student. She testified that she recalled that she and her mother were the liquidators of the succession. She stated that she agreed to take on this responsibility at the request of her mother, so that things would work better and it would be for the benefit of everyone.

[10] She does not recall opening the account, except that it must have intended to make it easier to manage her late father's affairs. She noted that she followed her mother's instructions, she signed cheques and she did not ask questions. Indeed, she was the only person authorized to sign cheques on that account, according to her

mother. She was able to identify her signature on the cheques that are the subject of this appeal, but she does not recall the reasons why those banking transactions were carried out. She remembers very little of the administration of her late father's estate, except that she received her share of his life insurance on her wedding day, two years ago.

[11] Ms. Nguyen explained how the sudden death of her husband had turned her life upside down. Ms. Nguyen was her husband's assistant at work. She did a little of everything, particularly on the human side of her husband's businesses, but she was not involved in anything relating to research or finances. As well, she was not certain of her quality in relation to her husband's estate. She identified herself as the liquidator of the succession, and later stated that she was the co-executor, with her daughter.

[12] Ms. Nguyen had difficulty recalling these events, which happened nearly 17 years ago. She stated that she had been depressed and anxious and was afraid she would die herself. Her daughter Isabelle was 20 years old and Ms. Nguyen wanted her help, in particular to continue some of the work her father had undertaken.

[13] Apart from the fact that it has been several years since these events, Ms. Nguyen stated that she had lost a number of important documents that were in the basement of her home because of a flood caused by burst pipes during the ice storm in January 1998. An incident report (Exhibit A-5) confirms that the basement was flooded. All of those documents had to be thrown out.

[14] In an attempt to obtain documents from the Royal Bank, Ms. Nguyen's lawyer was informed that records are kept only for seven years. The few documents offered in evidence were obtained by the investigator for the Canada Revenue Agency (the CRA) in January 1999: the bank statement for the estate's account (Exhibit A-12) and the cheques drawn on the account in question in this case (Exhibits A-13 and A-15).

[15] Ms. Nguyen identified Exhibit A-4, the payment proposal. She testified that the notary retained to handle the estate wanted to make a settlement offer to Revenu Québec and the CRA, given that her husband's estate was in deficit. As I noted earlier, however, the document in question did not contain an offer of that nature.

[16] With respect to the assets in the estate of the late Hien Vohoang, there was a hypothec on the family home and the hypothecary creditor seized and sold the home in May 1998. The bank accounts at Canada Trust and the RRSP belonging to the late

Hien Vohoang were seized by the Minister of Revenue of Quebec in 1993. The value of the shares listed in Exhibit A-1 is nil, since the companies became inactive or insolvent, according to the final report of the CRA officer and according to Ms. Nguyen. She added that all of the assets in the estate of the late Hien Vohoang were frozen and under the control of the notary retained by the heirs.

[17] Ms. Nguyen explained that after her husband's death there was discussion of allowing Speq Multimedia Inc. to continue doing the scientific research it had undertaken. The company also needed money to meet the requirements of the Commission des valeurs mobilières du Québec: \$480,001. It must be understood that Speq Multimedia Inc. and Six Graph Informatique Ltée applied to the Commission des valeurs mobilières du Québec on March 23, 1993, to have Speq Multimedia Inc exempted from the obligation to file a prospectus for the private placement of 416,667 class "A" shares with at least 50 bidders, and Six Graph Informatique Ltée for the private placement of 410,000 class "A" shares with Speq Multimedia Inc., on the conditions set out in the notice of offer. The exemption was granted on March 24, 1993. According to the notice of offer, the subscriptions were held in trust until the minimum placement of \$500,001 had been subscribed, by September 22, 1993, at the latest. According to the financial statements of Speq Multimedia Inc. on February 28, 1994, that company invested \$480,001 in a company that was not registered on the stock exchange and issued 166,767 class "A" shares for \$500,001. Those transactions were confirmed by the Société de développement industriel du Québec (Exhibit A-1), which registered Speq Multimedia Inc. as a Québec business investment company. However, Speq Multimedia Inc.'s registration was revoked on October 18, 1996. Her late husband's business partners, knowing that Ms. Nguyen had received money from life insurance policies, asked her to lend money to Speq Multimedia Inc. and also invest in the company. She stated that she then asked her daughter Isabelle to open an account for the estate at the Royal Bank, and identified the account as a transitional account for Speq Multimedia Inc. She does not understand why the account was in the name of her late husband's estate and offered the explanation that the mistake may have been because her daughter was young at the time. She does not understand why the name of the estate is associated with that bank account, given that there were no transactions in it in the name of the estate. This could only be a mistake.

[18] The estate's bank account was opened on September 7, 1993. The first deposit was in the amount of \$4,612.14. While Ms. Nguyen could not identify the source of the funds, she is certain that it was not money from a debtor of her husband's. The next day, September 8, 1993, two deposits in the amount of \$80,137.46 each were made to the account. The two deposits correspond to the amount of the two cheques

issued by NN Life Insurance Company to Ms. Nguyen and Isabelle Vohoang on August 27, 1993. On October 25, 1993, a withdrawal of \$160,000 was made from the account. Also on that date there was a second withdrawal, this time by cheque, in the amount of \$160,000, and the next day we see a second withdrawal by cheque, in the amount of \$160,000 as well. No one can explain why the statement shows three withdrawals of \$160,000. According to Ms. Nguyen, the two cheques issued by NN Life Insurance Company were deposited to that account as the money was to be lent to Speq Multimedia Inc; the heirs of the late Hien Vohoang were not to benefit therefrom.

[19] On November 5, 1993, the cheques from NN Life Insurance Company payable to Ms. Nguyen as guardian of her sons Fabrice and Alexandre were deposited at the Caisse populaire de Cartierville in an account opened for each of them by their mother. Ms. Nguyen thinks that she deposited the cheque from the group insurance policy into her personal account, and also lent that money to Speq Multimedia Inc.

[20] The estate's bank statement (Exhibit A-12) shows a balance of \$6,884.43 on October 29, 1993. The following transactions were made after that date, up to January 24, 1994:

	\$	\$
October 29, 1993	Interest \$1.37	Balance \$6,884.43
November 25, 1993	Deposit \$17,500	Balance \$24,384.43
December 14, 1993	Deposit \$9,568.59	No balance
December 15, 1993	Deposit \$55,000	No balance
December 22, 1993	Deposit \$2,400.68	No balance
December 22, 1993	Deposit \$1,112.14	No balance
December 24, 1993	Deposit \$60,000	Balance \$233,328.66
January 12, 1994	Deposit \$1,112.14	No balance
January 17, 1994	Withdrawal – cheque \$40,000	No balance
January 17, 1994	Withdrawal – cheque \$40,000	No balance
January 17, 1994	Withdrawal– cheque \$120,000	No balance
January 24, 1994	Deposit \$1,112.14	Balance \$35,552.94

[21] There were then several identical deposits of \$1,112.14 and only one significant withdrawal, by cheque, in the amount of \$11,000 on June 14, 1994. The account was closed on September 9, 1994, after a withdrawal of \$33,156.51. The documentation corroborating these transactions is no longer available, except for

what the CRA investigator obtained on January 11, 1999, and for the \$40,000 and \$120,000 cheques dated January 17, 1994, which are the subject of this appeal.

[22] The three cheques in question were signed by Isabelle Vohoang on January 13, 1994 (see Exhibit A-13) and were payable to the order of the Caisse populaire. Strangely, the three cheques do not seem to have been endorsed by the Caisse populaire. According to Exhibit A-13, which is identified as the reverse of those cheques, the deposit was made to the accounts of Fabrice and Alexandre Vohoang, one account corresponding to Alexandre's account at the time the cheque from NN was deposited, in the amount of \$40,000 each. The cheque for \$120,000 that was not endorsed by the Caisse was apparently deposited to the account of Isabelle Vohoang. We also have the reverse of another cheque deposited, which remains unexplained. Ms. Nguyen stated that the \$120,000 went to her children and that she instructed the manager of the Caisse to divide it among her children.

[23] According to Ms. Nguyen, the \$17,500, \$55,000 and \$60,000 deposits made on November 25 and 15 and December 24, 1994, respectively, came from her own account or her children's accounts and were intended to be invested in Speq Multimedia Inc. as loans. The withdrawals totalling \$200,000 that took place on January 17, 1994, represented a repayment of the money from the children's account that had been lent to Speq Multimedia Inc. The monthly deposits of \$1,112.14 found in Exhibit A-12, according to Ms. Nguyen's recollection, were associated with Speq Multimedia Inc. shares or loan repayments. She also stated that the numerous loans made to Speq Multimedia Inc. were repaid and the children did not lose any money. She has no documents to corroborate her assertions.

[24] Ms. Nguyen reiterated on cross-examination that the opening of the account in the name of the estate resulted from a mistake on the part of her daughter and stated that she had never noticed this. Ms. Nguyen stated that she had paid all the expenses resulting from the death of her husband, including funeral expenses.

[25] Thus, on December 23, 2003, the Minister assessed Ms. Nguyen in the amount of \$200,000 under subsection 159(3). The Minister submits that Ms. Nguyen was the liquidator of her deceased husband's succession and did not have a certificate of discharge within the meaning of subsection 159(2) of the Act before distributing the \$200,000 (the total of the three cheques) from the estate, and so she became personally liable for payment of the estate's tax debt for that amount. The same applies to the appellant Isabelle Vohoang as liquidator of the succession. Under subsection 160(1) of the Act, the Minister also assessed the appellant Isabelle Vohoang in the amount of \$120,000, on the ground that the estate transferred

that money to her without consideration when she and the late Hien Vohoang were not dealing at arm's length and the estate had a tax debt at that time.

[26] As for the appellants Alexandre and Fabrice Vohoang, they were assessed under subsection 160(1) of the Act on the same date in the amount of \$40,000 each, on the ground that the estate transferred that money to them when it had a tax debt, the parties to the transfer were not dealing with each other at arm's length, and the transfer was made without consideration, and so the appellants are jointly and severally liable for the tax debt of the late Hien Vohoang in the proportions assessed.

[27] The issue is therefore whether the appellants Huyen-Anh Nguyen and Isabelle Vohoang are jointly and severally liable for part of the tax owing by the estate of the late Hien Vohoang under subsection 159(1) of the Act and whether the Minister may assess them under subsection 159(3) of the Act on the ground that they have in their possession money from the estate. In the case of the appellant Isabelle Vohoang, the issue is also whether she is jointly and severally liable for part of the tax owing by the estate of the late Hien Vohoang under subsection 160(1) of the Act for the 1988 and 1990 to 1993 taxation years, to a maximum of \$120,000, and in the case of the two brothers, the appellants Fabrice and Alexandre Vohoang, whether they are similarly liable to a maximum of \$40,000 each.

[28] In examining these issues, we must also determine whether the assessments made against the late Hien Vohoang and his estate are time-barred, in that they would no longer be recoverable, and so the assessments against the appellants would be invalid.

[29] That being said, we must now consider the effect of section 159 and the statutory provisions that follow it and determine whether, in this case, the appellants Huyen-Anh Nguyen and Isabelle Vohoang acted in their capacity as legal representatives of a taxpayer. If so, the question is whether they actually disposed of property that belonged to the taxpayer, Hien Vohoang, or his estate, and if so, whether they did so before obtaining a certificate before distribution and did so at a time when there was an unpaid and payable debt in the estate of the taxpayer Hien Vohoang.

[30] Section 159 provides as follows:

**Person acting for another**



- (1) For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,
- (a) the legal representative is jointly and severally liable with the taxpayer
    - (i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and
    - (ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and
  - (b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

Subsections 159(2) and 159(3) read as follows:

**Certificate before distribution**

- (2) Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts
- (a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and
  - (b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

**Personal liability**

- (3) Where a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection 159(2) in respect of the amounts referred to in that subsection, the legal representative is personally liable for the

payment of those amounts to the extent of the value of the property distributed, and the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection, and the provisions of this Division apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152.

“Legal representative” is defined in subsection 248(1) as follows:

“legal representative” of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer’s estate;

[31] With respect to section 160 of the Act, it is essential to ensure that all of the criteria set out have been met before finding that it applies. Those criteria appear in subsection 160(1) and read as follows:

(1) **Tax liability re property transferred not at arm’s length**

Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

- (a) the person’s spouse or common-law partner or a person who has since become the person’s spouse or common-law partner,
- (b) a person who was under 18 years of age, or
- (c) a person with whom the person was not dealing at arm’s length,

the following rules apply:

- (d) the transferee and transferor are jointly and severally liable to pay a part of the transferor’s tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and
- (e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

- (i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and
- (ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

[32] That being said, we must first and foremost, in my opinion, determine whether, after the death of the insured, the proceeds of the insurance policies held by the late Hien Vohoang, who had not designated his [TRANSLATION] “estate” as beneficiary, became part of the assets of his estate, so that the Minister was warranted in making the assessments in issue. In other words, the issue is whether the mere fact that a bank account was opened in the name of the estate and money was deposited to it make that money an asset of the estate.

[33] The word “*succession*” is defined by Germain Brière in his collection *Les Successions*, published in 1994, as follows:

[TRANSLATION]

In its original sense, the word *succession* refers to the transfer to a living person or persons of the transferrable rights and obligations of a deceased person. ... In a derivative sense, the word *succession* refers to all of the property and debts that are thus transferred, that is, the patrimony of the succession. ... Just now, we will address only the first meaning. In that sense, *succession* is a method of transfer because of death.

[34] It is therefore clear that *succession* is simply a word that includes the transfer of rights and obligations of a deceased to his or her family members, and that the devolution takes place either by operation of law (*succession ab intestat*) or by will. Unless it is stipulated that the deceased’s life insurance is payable [TRANSLATION] “to my estate”, the proceeds are not part of the estate and do not comprise a right that is part of the patrimony of the deceased, in this case the late Hien Vohoang.

[35] The evidence is also clear that the estate was in deficit and the creditors, specifically Revenu Québec, seized all the assets. The evidence is also to the effect that the money was transferred to the beneficiaries of the insurance policies in their personal names. Does the mere fact that the money was deposited in a bank account in the name of an estate make that money part of the assets of the estate? In my

opinion, intent, in the civil law, is of considerable importance, and opening a bank account constitutes a contract between a client and a bank, and the intent of the appellant Isabelle Vohoang, acting on her mother's instructions, plays a key role.

[36] All of the events in this case occurred in 1993 and 1994. The assessments were made in 2003. Seventeen years have passed since the events in question and, with time, documents have been lost and details forgotten. In a situation of this nature, examining documents or written materials, such as copies of bank records, might have refreshed the memories of the witnesses and helped to confirm certain assertions. In this case, the water damage in 1998 at the family home did not help. In addition, with the passage of time, Ms. Nguyen has forgotten some details, although she could look to the documents obtained by the CRA investigator in 1998 to refresh her memory. I cannot ignore the fact that almost five years had passed from January 1999, when the CRA obtained the bank documents, to December 2003, when the assessments were made. In my opinion, there is nothing that could warrant such a long delay, other than that the Minister wanted to take advantage of the fact that there is no limitation that applies to making the assessments in issue.

[37] In spite of the few resources available to her, Ms. Nguyen was nonetheless able to recall enough details surrounding the death of her husband, in spite of her state of mind at the time and the circumstances that followed the death. While Ms. Nguyen's testimony on certain points did seem contradictory, overall, she gave coherent, credible and very plausible testimony, having regard to all the circumstances of the case.

[38] Hien Vohoang died suddenly in the middle of a tennis game. He was a man who operated a number of scientific research companies and the management of all the businesses was described as a "one man show", run by him. It is obvious that his departure left his family in a state of shock, and the businesses he operated in a state of confusion.

[39] It is apparent from Exhibit A-4 that Hien Vohoang's financial situation had been better, and I have no reason not to accept the fact that the estate was in deficit in the proportions shown in the inventory submitted in that exhibit. That document also provides a clear illustration of Ms. Nguyen's lack of understanding of the purpose of that document. She believed it was a payment proposal made to Revenu Québec and Revenue Canada, whereas it is a proposal for payment of the estate's debts to the lawyer and notary for services to the estate.

[40] One thing is certain, however: the creditors of the late Mr. Vohoang got their hands on all of the assets of the estate. The Caisse populaire seized the house and the Ministère du Revenu du Québec seized the furniture, the bank accounts at Canada Trust and the RRSP. The value of the shares collapsed when the companies disappeared.

[41] According to the evidence of record, the only source of cash available during the months after Mr. Vohoang's death was the proceeds of two insurance policies for more than \$350,000, payable to the designated beneficiaries. In my opinion, that money did not belong to the estate, and to all intents and purposes it was under the control of Ms. Vohoang. It was during that period that she decided, with the support of her late husband's partners, to invest money in Speq Multimedia Inc. and lend money to the company to enable it to continue the research undertaken and meet the requirements of the Commission des valeurs mobilières du Québec. I accept Ms. Nguyen's explanation regarding the opening of the estate's account without hesitation: the account was intended to be used only for the loan and investment transactions relating to Speq Multimedia Inc. and the account had nothing to do with her late husband's estate. Isabelle Vohoang thus opened the account in the name of her late father's estate by mistake. I also accept that no money deposited in that account was part of the assets of her father's estate. Ms. Nguyen also testified that the notary for the estate was not aware of the existence of that account. In view of the notary's role in the liquidation of the estate (fees of \$5,212.95, according to Exhibit A-4), it seems apparent to me that if a real account in the name of the estate had been opened, he would have been aware thereof.

[42] In my opinion, there was no reason to open that account in the name of the estate, since all of the assets in the estate were seized and all of the incidental expenses associated with the estate were paid by Ms. Nguyen personally. On the question of the source of the funds deposited in the estate's account, I accept Ms. Nguyen's version without hesitation: the money came from her account and her children's accounts at the Caisse populaire and she simply repaid her children by the three cheques in question, which, I would note, were all payable to the Caisse populaire, which did not endorse them. It would appear that those cheques were deposited to the children's accounts, according to the reverse of the cheques and to Ms. Nguyen's testimony, which I also accept.

[43] I am satisfied, on a balance of probabilities and notwithstanding appearances that this was not an account opened for the purposes of the estate, but an account opened for the financing of Speq Multimedia Inc., and the account was labelled as it

was by mistake. The withdrawals of funds from that account therefore cannot provide a basis for the assessments in issue.

[44] We would also need to know whether, in this case, the appellants Huyen-Anh Nguyen and Isabelle Vohoang became the legal representatives of the taxpayer, the late Hien Vohoang, within the meaning of the Act, such that they became personally liable for the entire amount not paid by the taxpayer under section 159 of the Act.

[45] I have already concluded that the money in the estate's account was not part of the assets of the estate of the late Hien Vohoang; hence, I need not address that question. The mere fact that they acknowledged being the liquidators of the succession is not sufficient in itself for me to conclude otherwise, given that the evidence as a whole satisfies me that the two appellants in question did not seem to understand the meaning of the expression [TRANSLATION] "liquidator of the succession" or the roles and responsibilities associated with it, and their testimony did not satisfy me that they actually acted in that capacity. The documentation offered in evidence also seems to me to be insufficient for me to conclude that they actually assumed that responsibility. The payment proposal (Exhibit A-4) was never homologated. The two appellants stated that they had accepted the estate of the late Hien Vohoang under benefit of inventory, by deed received before the notary on December 13, 1993, but nothing came out of that, and in my opinion, they were never appointed as legal representatives of the estate of the late Hien Vohoang.

[46] In the light of my conclusions, it is not necessary to address the other questions. The appeals are allowed and the assessments are vacated. The appellants are entitled to only one bill of costs.

Signed this 12th day of November 2010.

"François Angers"

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Angers J.

François Brunet, Revisor

CITATION: 2010 TCC 503

COURT FILE NOS: 2005-3320(IT)G, 2005-3322(IT)G,  
2005-3323(IT)G, 2005-3324(IT)G

STYLES OF CAUSE: Huyen-Anh Nguyen v. Her Majesty the  
Queen  
Isabelle Vohoang v. Her Majesty the Queen  
Fabrice Vohoang v. Her Majesty the Queen  
Alexandre Vohoang v. Her Majesty the  
Queen

PLACE OF HEARING: Montreal, Quebec

DATES OF HEARING: June 7 and 8, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: November 12, 2010

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