

Docket: 2018-1226(IT)I

BETWEEN:

DINY W. EYCKELHOFF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 8, 2019, at Calgary, Alberta

Before: The Honourable Justice Susan Wong

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Allan Mason

AMENDED JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2015 taxation year is dismissed, without costs.

Signed at Ottawa, Canada, this 27th day of November 2020.

“Susan Wong”

Wong J.

Citation: 2020 TCC 130

Date: 20201127

Docket: 2018-1226(IT)I

BETWEEN:

DINY W. EYCKELHOFF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Wong J.

Introduction

[1] The issue in this appeal is whether the Minister of National Revenue properly reassessed the appellant's 2015 taxation year to include additional foreign pension income.

Details of the reassessment

[2] The Minister determined that Ms. Eyckelhoff received foreign pension income totalling \$39,369 in 2015 and broken down as follows:¹

Description	In Euros (€)	Exchange rate of 1.4182	In Canadian Dollars (\$)
SVB Deventer (Social Insurance Bank Deventer)	€5.141		\$7,291
Stichting Bedrijfspensioenfonds voor medewerkers in het Notariaat (Foundation Occupational Pension for Notary employees)	€14.982		\$21,247
Aegon Levensverzekering N.V. (Aegon Life Insurance N.V.)	€7.637		\$10,831
TOTAL	€27.760		\$39,369

[3] Of the \$39,369, the Minister says that pension income of \$21,455 was not reported by Ms. Eyckelhoff.²

[4] The appellant paid foreign taxes of \$3,905.72 in 2015 and received an equivalent foreign tax credit.³

Preliminary matters

[5] At the commencement of hearing, Ms. Eyckelhoff advised that she agreed the amounts from SVB Deventer and Stichting were properly included in her income and income tax assessed.

[6] She continues to dispute the inclusion of the Aegon amount, however. Specifically, she says that the Aegon payments are not taxable because they were not pension benefits. Rather, she says that the payments were received under a disability insurance policy for which she paid 100% of the premiums from after-tax dollars in the Netherlands. She says that she no longer contests the other two amounts because they were pension payments and therefore, taxable.

Issues

[7] The questions to be answered are:

- a. Did Ms. Eyckelhoff receive the Aegon payments pursuant to a Netherlands disability insurance policy or was it a pension?
- b. If the Aegon payments were received under a Netherlands disability insurance policy, are they taxable in Canada and does it matter that Ms. Eyckelhoff paid 100% of the premiums?
- c. What is the effect of the tax treaty between Canada and the Netherlands on this situation?

Legislative framework

[8] The tax treaty between Canada and the Netherlands applies to: (1) Canadian income taxes, and (2) Netherlands income tax and wages tax (among others).⁴ Article 18 of the treaty deals with pensions, annuities, and social security payments, among other things.

[9] Under the treaty, pensions, annuities and other similar payments, as well as social security pension/payments arising in the Netherlands and paid to a Canadian resident, may be taxed in Canada or the Netherlands.⁵ To avoid double taxation of Netherlands income, tax paid on income received in the Netherlands is deducted from Canadian tax payable on the same income.⁶ This deduction from Canadian tax payable is the foreign tax credit, which can be claimed for non-business-income tax paid to the government of another country.⁷ Both the Netherlands income tax and wages tax are considered to be income tax for the purposes of avoiding double taxation.⁸

[10] In Canada, pension benefits are generally taxable subject to specific exceptions such as a benefit received under an employee benefit plan that is already required to be included in income under paragraph 6(1)(g) of the *Income Tax Act*.⁹ None of the listed exceptions in subparagraph 56(1)(a)(i) seem to apply here.

[11] With respect to disability insurance, paragraph 6(1)(f) of the Act says that benefits received by an employee under a disability insurance plan to which the employer has contributed premiums are included in income, less the amount of premiums contributed by the employee. The Act is otherwise silent and where a person pays 100 percent of their disability insurance premiums, both the court and the Minister have treated the resulting benefits as not taxable.¹⁰

Analysis

[12] The greatest challenge for the court in this case is the lack of information.

[13] I was able to review an untranslated copy of a January 20, 2016 letter from Aegon which attached a copy of Ms. Eyckelhoff's annual statement for 2015,¹¹ along with a version translated to English.¹² Aegon refers to her receiving an annuity benefit, says that they paid certain statutory deductions to Revenue Services, and tells her that these statutory deductions are summarized in the annual statement. The annual statement in turn shows that deductions were made for wage tax(*sic*)/social insurance and health care insurance.

[14] Based on this information, I am unable to conclude that the Aegon plan was a disability insurance plan. I can only see that it was a plan which paid her an annuity and that the insurer deducted the wages tax, which is considered income tax under the treaty.¹³ The fact that the insurer deducted income tax from her annuity does not assist in the determination but rather, makes the nature of the Aegon payments less clear.

[15] If the Aegon plan was disability insurance, then it matters who paid the premiums. However, Ms. Eyckelhoff gave only oral testimony about paying the premiums and no objective third-party evidence to show the court that she paid 100% of the premiums. I do not believe it matters that after-tax dollars were used.

[16] Based on the evidence before me, I am unable to find that the Aegon payments were made under a disability insurance plan for which Ms. Eyckelhoff paid 100% of the premiums. Therefore, the factual assumptions made by the Minister in reassessing have not been rebutted and the reassessment must stand.¹⁴

[17] I wish to note that if Ms. Eyckelhoff can obtain the necessary third-party information about the Aegon payments (and assuming it corroborates what she has said), she does not appear to be precluded from requesting taxpayer relief under subsection 152(4.2) since the 2015 taxation year falls within the rolling 10-year time limit to do so. I hope that she will seek the assistance of a Canadian tax professional in this regard.

Conclusion

[18] The appeal is dismissed, without costs.

These Amended Reasons for Judgment are issued in substitution for the Reasons for Judgment signed on November 23, 2020 for the sole purpose of correcting a typographical error in the signature line.

Signed at Ottawa, Canada, this 27th day of November 2020.

“Susan Wong”

Wong J.

CITATION: 2020 TCC 130

COURT FILE NO.: 2018-1226(IT)I

STYLE OF CAUSE: DINY W. EYCKELHOFF and HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: November 8, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: November 23, 2020

DATE OF AMENDED JUDGMENT: November 27, 2020

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Allan Mason

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm: n/a

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

¹ Exhibit R-1: Annual statements (English translation); Exhibit R-2: Annual statements (in Dutch).

² Amended Reply to the Notice of Appeal, paragraph 10.

³ Amended Reply to the Notice of Appeal, paragraph 13(g).

⁴ Convention Between Canada and the Kingdom of the Netherlands, Article 2, paragraph 3.

⁵ Convention Between Canada and the Kingdom of the Netherlands, Article 18, paragraphs 1 and 2.

⁶ Convention Between Canada and the Kingdom of the Netherlands, Article 22, paragraph 5(a).

⁷ *Income Tax Act*, subsection 126(1).

⁸ Convention Between Canada and the Kingdom of the Netherlands, Article 22, paragraph 6(b).

⁹ *Income Tax Act*, subparagraph 56(1)(a)(i).

¹⁰ *Béliveau v. The Queen*, 2018 TCC 87 at paragraphs 14, 22, and 24.

¹¹ Exhibit R-2: Annual statements (in Dutch).

¹² Exhibit R-1: Annual statements (English translation).

¹³ Convention Between Canada and the Kingdom of the Netherlands, Article 22, paragraph 6(b).

¹⁴ Amended Reply to the Notice of Appeal, paragraph 13.