Docket: 2013-4667(IT)I

BETWEEN:

NANICA HOLDINGS LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 9, 2014, at Vancouver, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	Max Weder
Counsel for the Respondent:	Perry Derksen Shankar Kamath

AMENDED JUDGMENT

The appeal from the assessment made under the *Income Tax Act* with respect to the taxation years ending August 31, 2010 and August 31, 2011 is allowed, **with** costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to dividend refunds of $10,833 and $11,167 in 2010 and 2011 respectively.

This Judgment is issued in substitution for the Judgment dated April 10, 2015

Signed at Ottawa, Canada, this 30th day of April 2015.

"V.A. Miller"

V.A. Miller J.

Citation: 2015TCC85
Date: 20150410
Docket: 2013-4667(IT)I

BETWEEN:

NANICA HOLDINGS LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

Overview

[1] The Appellant is a Canadian controlled private corporation within the meaning of subsection 125(7) of the *Income Tax Act* (the *"Act*"). In 2007 and 2008, it paid taxable dividends to its shareholders. However, it failed to file its income tax returns for those years within three years of its year end and it was denied a dividend refund under subsection 129(1) of the *Act*.

[2] The Minister of National Revenue (the "Minister") used the formula in subsection 129(1) to calculate the "dividend refund" which had been denied to the Appellant in the 2007 and 2008 years and then subtracted the amount of the dividend refund from the Appellant's refundable dividend tax on hand ("RDTOH") account. This reduced RDTOH amount was used in the calculation of the dividend refund which the Appellant received in 2010 and 2011, the years under appeal.

[3] The issue in this appeal is whether the phrase "dividend refund" in paragraph 129(3)(*d*) represents the amount which is paid or credited to a corporation or whether it is a notional amount which reduces a corporation's RDTOH account at the end of the year notwithstanding that the corporation did not receive a refund.

[4] The brief answer to this issue is that a dividend refund is an amount which is actually paid or credited to the Appellant.

[5] Prior to issuing my decision in this case, this same issue came before this Court in the general procedure appeal of *Presidential MSH Corporation v The Queen*, 2015 TCC 61. I agree with Justice Graham's conclusion in *Presidential MSH Corporation* and I adopt his conclusion in my decision.

Facts

[6] The parties filed a Statement of Agreed Facts which I have attached as Appendix A to this decision. A summary of the facts is as follows.

[7] The Appellant's fiscal year end is August 31. In its 2007 taxation year, it received dividends of $76,168 from non-connected corporations. In its 2007 and 2008 taxation years, the Appellant paid taxable dividends to its shareholders of $73,800 and $111,000 respectively. It did not file its income tax returns for 2007 and 2008 until December 22, 2011 and January 6, 2012 respectively, which was more than three years after its year end for both 2007 and 2008.

[8] In its 2007 income tax return, the Appellant computed its liability for Part IV tax to be $25,389. It claimed a refund under subsection 129(1) in the amount of $24,600 in 2007 and $789 in 2008. Those refunds were correctly disallowed by the Minister as a result of the Appellant's late filing of its returns and in accordance with subsection 129(1).

[9] The Appellant received no dividends, paid no taxable dividends and had no investment income in the 2009 year.

[10] In 2010 and 2011, the Appellant had investment income of $5,792 and $9,267, respectively and it paid taxable dividends in the amount of $32,500 and $33,500 respectively. In its 2010 and 2011 returns, the Appellant claimed dividend refunds of $1,545 and $2,471, respectively. The dividend refunds claimed for 2010 and 2011 were allowed by notice of assessment dated February 1, 2012.

[11] The 2007 and 2008 years were initially assessed by the Minister on March 26, 2012 and March 15, 2012, respectively. When the Appellant learned that the dividend refunds for 2007 and 2008 had been denied, it requested that its income tax returns for the 2010 and 2011 years be amended and that it be allowed dividend refunds in the amount of $10,833 and $11,167, respectively. The Appellant based its calculation for the revised dividend refunds on its view that there should be no reduction to its RDTOH account because the dividend refunds for 2007 and 2008 had been denied.

[12] The Appellant's request to amend its returns for the 2010 and 2011 years was denied. However, the Appellant was granted an extension of time to file a notice of objection to its initial assessment for these years. The assessment was confirmed.

Appellant's Position

[13] The Appellant argued that the amount to be subtracted from its RDTOH account is nil because the dividend refunds for the 2007 and 2008 years were not paid or credited to it. Counsel for the Appellant submitted that Justice Hogan's conclusion in *Tawa Developments Inc v The Queen*, 2011 TCC 440 should be followed because it was well reasoned, persuasive and directly on point.

[14] In *Tawa*, Justice Hogan was asked to decide whether the taxpayer was entitled to a dividend refund in its 2004 taxation year even though it had filed its 2004 income tax return more than three years after its 2004 year end. The Minister had denied the dividend refund claimed by Tawa and had also reduced Tawa's RDTOH account. Justice Hogan held that the denial of the dividend refund for Tawa's 2004 year was correct. However, after a thorough textual, contextual and purposive analysis, he also concluded that the RDTOH account should not be reduced by the amount of the denied dividend refund.

[15] In support of his position, counsel for the Appellant also relied on O*ttawa Ritz Hotel Co v R*, 2012 TCC 166. In that decision, Justice Webb, as he then was, in *obiter*, agreed with Justice Hogan's conclusion that the RDTOH account is not reduced by the amount of a dividend refund which is denied.

[16] Counsel for the Appellant stated that the definition of RDTOH given in subsection 129(3) depends on the definition of dividend refund given in subsection 129(1). He quoted the following passage from *Bulk Transfer Systems Inc v The Queen*, 2005 FCA 94 at paragraph 33:

> The balance in the RDTOH account at the end of a particular year is reduced in the following year by the amount of dividend refunds to which the corporation has become entitled as a result of the payment of taxable dividends to its shareholders.

[17] Counsel further argued that there are two conditions to the entitlement of a dividend refund in subsection 129(1). The first condition is that the taxpayer must have paid taxable dividends; and, the second condition is that the taxpayer must file its income tax return within three years of its year end. In the circumstances

where the taxpayer filed his tax return beyond the three year limitation period, it is not "entitled" to a dividend refund and consequently, its RDTOH account should not be reduced. Stated another way, the Appellant's argument is that since it did not receive a dividend refund in 2007 and 2008, the amount to be deducted from its RDTOH account is nil.

Respondent's Position

[18] The Respondent's position in this appeal was similar to that argued in *Presidential MSH Corporation*. Similar arguments were also made by the Canada Revenue Agency in its opinion contained in document 2012 – 0436181E5.

[19] The Respondent submitted that the phrase "dividend refund" as contained in paragraph 129(3)(*d*) of the definition for RDTOH is a notional amount calculated in accordance with subsection 129(1). It is not a reference to the amount actually refunded. Therefore, the dividend refund is subtracted from the Appellant's RDTOH account notwithstanding that the amount was not actually refunded. In the Respondent's view, the Appellant's "dividend refund" was $24,600 and $789 in 2007 and 2008 respectively and these amounts were correctly deducted from the Appellant's RDTOH account.

Analysis

[20] In this appeal, the question concerns the amount of the Appellant's dividend refunds for the 2007 and 2008 taxation years. The amount of these refunds is used in calculating the Appellant's RDTOH available in subsequent years – in particular, the 2010 and 2011 years which are under appeal.

[21] The dividend refund and the RDTOH account are part of a complex, technical scheme involving many provisions of the *Act*. The relevant provisions for our purposes are subsections 129(1) and (3) which read:

> **129.** (1) Where a return of a corporation's income under this Part for a taxation year is made within 3 years after the end of the year, the Minister
>
> > (*a*) may, on sending the notice of assessment for the year, refund without application an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of[1]

(i) 1/3 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time when it was a private corporation, and

(ii) its refundable dividend tax on hand at the end of the year; and

(*b*) shall, with all due dispatch, make the dividend refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(*a*).

…

(3) In this section, "refundable dividend tax on hand" of a corporation at the end of a taxation year means the amount, if any, by which the total of

(*a*) where the corporation was a Canadian-controlled private corporation throughout the year, the least of

(i) the amount determined by the formula

A – B

where

A
is 26 2/3% of the corporation's aggregate investment income for the year, and

B
is the amount, if any, by which

(I) the amount deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part

exceeds

(II) 9 1/3% of its foreign investment income for the year,

(ii) 26 2/3% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(*a*) to (*c*) in respect of the corporation for the year,

(B) 100/35 of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) the amount determined by multiplying the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, by the relevant factor for the year, and

(iii) the corporation's tax for the year payable under this Part,

(*b*) the total of the taxes under Part IV payable by the corporation for the year, and

(*c*) where the corporation was a private corporation at the end of its preceding taxation year, the corporation's refundable dividend tax on hand at the end of that preceding year

exceeds

(*d*) the corporation's dividend refund for its preceding taxation year.

[22] In *Tawa*, Justice Hogan concluded that when a corporation failed to file its tax return within three years after its year end, the dividend refund provision in subsection 129(1) became inoperative and the refund was unobtainable. It was his opinion that the *Act* provided no definition of the phrase "dividend refund" other than the formula contained in paragraph 129(1)(*a*) which stated that it is an "amount … equal to the lesser of" two amounts – 1/3 of all taxable dividends paid in a particular taxation year and the corporation's refundable dividend tax on hand at the end of the particular year. Justice Hogan then looked to the ordinary definition of the term "refund" to inform his opinion that the word "refund" implied a repayment and the receiving of a benefit. As a result of a textual, contextual and purposive analysis, he concluded that the phrase "dividend refund" represents an amount which is actually refunded. I agree with his conclusion.

[23] Both Justices Hogan and Graham have reached the same conclusion with respect to the phrase "dividend refund" albeit by different routes. In *Presidential MSH Corporation*, after a textual, contextual and purposive analysis, Justice Graham concluded that the phrase "dividend refund" means **"a refund of an amount"** which is determined by the formula given in paragraph 129(1)(*a*). According to his conclusion, if a corporation failed to file its tax return within three years after its year end, it was not entitled to receive a "**refund of an amount"** and therefore its "dividend refund" was nil.

[24] It is widely recognized that statutory provisions must be interpreted with regard to their text, context and purpose harmoniously with the scheme and object of the *Act* as a whole: *Canada Trustco Mortgage Co v The Queen*, 2005 SCC 54 at paragraph 10. However, rather than giving the entire textual, contextual and purposive analyses here, which were fully canvassed in the prior referenced cases, I will address only those submissions made by the Respondent which were not discussed in *Presidential MSH Corporation*.

[25] In his submissions with respect to the textual interpretation of subsection 129(1), counsel for the Respondent stated that subsection 129(1) defines the phrase "dividend refund" as "an amount equal to the lesser of two amounts". I disagree with this interpretation.

[26] When interpreting a provision textually, you have to read the provision grammatically. This involves looking at the subject, the verb and the object in the sentence under review. The Respondent's interpretation would have one look at only the object in the sentence. It is my view that the Respondent's interpretation would be correct if the section in parenthesis read "which amount in the Act is referred to as its dividend refund for the year". I note that there is a limitation in the English version of paragraph 129(1)(*a*) which does not appear in the French version of that paragraph. That is, in the English version, the dividend refund is "for the year". This limitation does not seem to be expressed in the French version of the *Act*. The English and French version of the relevant portion of the paragraph read:

…the Minister:	le ministre:
a) may, … , refund … an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of …	*a)* peut, … , rembourser, … , une somme (appelée «remboursement au titre de dividendes» dans la présente loi) égale à la moins élevée des

sommes suivantes

[27] It is my view that the words in parenthesis do not refer to just the object in the sentence - that is to the word "amount". The words in parenthesis refer to the text of the sentence which is the "Minister refunding an amount" . A textual reading of subsection 129(1) means that a corporation's "dividend refund" is "refund of an amount". It is the act of refunding which gives the words in parenthesis its meaning. If the Minister does not refund an amount, because a corporation has not met the condition in the preamble to subsection 129(1), then the dividend refund is nil.

[28] In his written submissions, counsel for the Respondent argued that to interpret the phrase "dividend refund" as requiring a refund would ignore subsection 129(2) which permits "the application – but not the refund – of the amount". Subsection 129(2) is a set-off provision. It reads:

> Application to other liability
>
> (2) Instead of making a refund that might otherwise be made under subsection 129(1), the Minister may, where the corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refundable to that other liability and notify the corporation of that action

[29] With respect, it is clear that subsection 129(2) would only come into play when a corporation is entitled to receive a "refund of an amount". If a corporation has filed its tax return beyond the three year limit, its dividend refund would be nil and the Minister would not apply any amount to the corporation's liability. It is my view that subsection 129(2) supports the Appellant's position.

[30] The Respondent has also argued that the phrase "dividend refund" in paragraph 129(3)(*d*) of the definition of RDTOH is a notional amount calculated in accordance with subsection 129(1). Counsel stated that it is not a reference to the amount actually refunded. However, this argument does not respect the language of paragraph 129(1)(*a*).

[31] I agree that the RDTOH account is a notional account which determines the maximum amount of a dividend refund which a corporation may receive upon the payment of taxable dividends: *Bulk Transfer Systems Inc v The Queen* at paragraph 34. It is correct that the dividend refund from the preceding year is a component in

the calculation of the RDTOH. However, it does not follow from the premise that the RDTOH account is a notional account that the components used to calculate it are also notional. The RDTOH account is the notional method for tracking the amount of tax a corporation can potentially get refunded to it upon payment of sufficient dividends. The same cannot be said for a dividend refund which is an amount that is available for a monetary refund or credit where certain conditions are met.

[32] The context for the phrase "dividend refund" must be considered in conjunction with Part IV tax. "Dividend refunds" are a component of the overall scheme which allows a private corporation to recover a partial refund of the tax it has paid on investment income when it pays taxable dividends to its shareholders: Vern Krishna, *The Fundamentals of Canadian Income Tax*, 9th ed. Thomson Carswell at pages 772 to 773.

[33] The dual purpose of Part IV tax, coupled with the dividend refund and RDTOH mechanism, is to prevent the deferral of tax by earning income inside a corporation and to permit the integration of tax between a corporation and the individual shareholder. The ultimate goal is to achieve neutrality whether earning investment income inside a corporation or earning it personally.

[34] Part IV tax is levied according to the rules in sections 186 through 186.2 of the *Act*. Paragraph 186(1)(*a*) imposes a 1/3 tax on "assessable dividends" received by private corporations or subject corporations. For the present purposes, assessable dividends are those inter-corporate dividends which are deductible under section 112 in calculating the private corporation's Part I tax. Section 129 allows a private corporation which pays a taxable dividend to a shareholder to obtain a refund of Part IV tax so that the shareholder ultimately pays the tax on the income. The mechanism that achieves this refund of tax is the RDTOH account which tracks the amount of tax the corporation can potentially be refunded upon the appropriate dividends.

[35] In conclusion, the context of the "dividend refund" described in paragraph 129(1)(*a*) is within the system used to collect tax up front from a corporation and then to refund that tax, or part of it, when a dividend is paid out to a shareholder. It is designed to prevent tax deferral. The purpose of the section 129 is to prevent tax deferral by placing the shareholder who has received the dividends in much the same tax position as if he had received the investment income himself without the intermediary corporation.

[36] When the phrase "dividend refund" is analysed in this context, it is clear that it is not a notional amount. The system contemplates an actual repayment of tax to the corporate taxpayer, not a notional repayment or a mere tracking of amounts.

[37] As stated earlier, Parliament's goal in enacting section 129 was to integrate corporate and shareholder taxation. How is this goal achieved with the limitation period contained in subsection 129(1)?

[38] The Respondent argued that "integration absent any limitation" was not Parliament's goal. In support of this position, counsel referred to the *Summary of the 1971 Tax Reform Legislation* published by the Minister of Finance which stated that the cost of the newly introduced refundable tax on investment income and dividend income would be borne by the federal government. However, it is not clear from the Crown's argument which costs are being borne by the federal government.

[39] The best evidence that Parliament wished to place some limit on integration is precisely the limitation period in subsection 129(1), which makes the Minister's obligation to pay or credit the dividend refund contingent on the timely filing of the corporation's income tax return. It is clear that the integration of corporate and shareholder taxation by way of a dividend refund is subject to the limitation period in subsection 129(1). See *Tawa* (*supra* paragraph 14), *Ottawa Ritz Hotel Company Limited (supra* paragraph 15) and *1057513 Ontario v The Queen*, 2014 TCC 272.

[40] Counsel for the Respondent argued that the limitation period is rendered ineffective and meaningless if the denial of the dividend refund is not coupled with a reduction in the RDTOH in subsequent years. He stated that if the amount remains available for the calculation of a dividend refund in future years, then the Appellant, in effect, still gets its dividend refund despite filing its income tax returns late.

[41] I disagree. This denies the cost of losing a dividend refund in the current year. The effect of not receiving a dividend refund is felt by both the corporation and the shareholder. The corporation does not get a refund of the Part IV tax and the shareholder who receives the taxable dividend gets a dividend tax credit which is intended to be a credit for the underlying corporate tax only. The shareholder does not get a credit for the Part IV tax. There is double taxation. In addition, the corporation is liable for a late filing penalty and arrears interest. Applying the conclusion reached by Justices Hogan and Graham, the Appellant may be able to recover some of the underlying Part IV tax if it later pays out sufficient taxable

dividends or if it is partially reduced by business losses. This will occur only in future years, if at all. In the meantime, the funds have left the corporation and have been taxed twice. The penalty of late filing is clear.

[42] It is my view that Parliament's intent with respect to the limitation period in subsection 129(1) is achieved without the reduction of the RDTOH account. The purpose of the limitation period is accomplished when the dividend refund is denied.

[43] In conclusion, I agree with both Justices Hogan and Graham that the phrase "dividend refund" in section 129 is the refund of an amount. It is an amount which is actually refunded to the Appellant by the Minister. As a result, the Appellant's RDTOH account should not have been reduced by the denied dividend refunds. It was entitled to dividend refunds of $10,833 and $11,167 in 2010 and 2011 respectively.

[44] The appeal is allowed.

Signed at Ottawa, Canada, this 10th day of April 2015.

"V.A. Miller"

V.A. Miller J.

---

[1] Prior to December 15, 2010, paragraph 129(1)(*a*) read as follows:

> *(a)* may, on mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

My interpretation of this paragraph is the same for both versions of paragraph 129(1)(*a*).

APPENDIX "A"

STATEMENT OF AGREED FACTS

The parties to this proceeding admit, for the purpose of this proceeding only, the truth of the following facts:

1. The appellant is a private corporation and Canadian-controlled private corporation within the meaning of the *Income Tax Act*. It uses a fiscal period ending August 31.

2. In its 2007 taxation year, the appellant received dividends of $76,168 from corporations other than payer corporations connected with it.

3. In its 2007 and 2008 taxation years, the appellant paid taxable dividends to its shareholders of $73,800 and $111,000, respectively.

4. The appellant filed its income tax returns for the 2007 and 2008 taxation years more than three years after the end of the year. In particular, the 2007 return was filed on December 22, 2011 and the 2008 return was filed on January 6, 2012.

5. In filing its return for the 2007 taxation year, the appellant computed its liability for Part IV tax in the amount of $25,389. And the appellant claimed a refund under subsection 129(1) on the basis that the amount of its dividend refund for the year was $24,600.

6. In filing its income tax return for the 2008 taxation year, the appellant claimed another refund under subsection 129(1) on the basis that the amount of its dividend refund for the year was $789.

7. The appellant received no dividends, paid no taxable dividends and had no investment income in the 2009 taxation year.

8. In the 2010 taxation year, the appellant had aggregate investment income of $5,792 and paid taxable dividends to its shareholders of $32,500.

9. In the 2011 taxation year, the appellant had aggregate investment income of $9,267 and paid taxable dividends to its shareholders of $33,500.

10. The appellant filed income tax returns for the 2009, 2010 and 2011 taxation years on January 17, 2012.

11. In the 2010 return, the appellant claimed a refund for the amount of its "dividend refund" for the year under subsection 129(1) of $1,545. Likewise, in the 2011 return, the appellant claimed a refund for the amount of its "dividend refund" for the year under subsection 129(1) of $2,471.

12. The Minister initially assessed the appellant for the 2010 and 2011 taxation years on February 1, 2012 (the 2010 and 2011 Initial Assessments). In assessing, the Minister computed the amount of the appellant's "dividend refund" for the year as claimed and applied the amount to the appellant's tax liability under the Act for those years, in accordance with subsection 129(2).

13. The Minister's initial assessments for the appellant's 2007 and 2008 taxation years followed about six to eight weeks after the 2010 and 2011 Initial Assessments. In particular, the Minister initially assessed the appellant for the 2007 taxation year on March 26, 2012 and for the 2008 taxation year on March 15, 2012 (the 2007 and 2008 Initial Assessment).

14. In assessing the appellant for the 2007 taxation year, the Minister assessed Part IV tax of $25,389. But the Minister disallowed the refund claimed under subsection 129(1) for the appellant's "dividend refund" for the year because the return was filed more than three years after the end of the year. For the same reason, the Minster disallowed the refund claimed under subsection 129(1) for the appellant's "dividend refund" for the year in assessing the 2008 taxation year.

15. The Minister subsequently reassessed the appellant for the 2007 and 2008 taxation years on April 10, 2012 to reduce a subsection 162(1) failure to file penalty in 2007 and to apply a failure to file penalty in 2008.

16. After the 2007 and 2008 Initial Assessments, the appellant requested that its return for the 2010 and 2011 taxation years be amended and that it be allowed a refund on the basis that the amount of its "dividend refund" for the year was $10,833 and $11,167, respectively, calculated as follows:

Lesser of:	August 31, 2010	August 31, 2011
(i) 1/3 of taxable dividends paid in the year	$10,833 ($32,500 x 1/3)	$11,167 ($33,500 x 1/3)
and		
(ii) Refundable dividend tax on hand (**RDTOH**) at the end of the year under s. 129(3)	$26,934 ($25,389 + $1,545)	$18,572 ($16,101+$2,471)

17. The appellant's request was denied. The appellant next applied and was granted an extension of time to serve notices of objection to the 2010 and 2011 Initial Assessments.

18. But after reconsidering the assessments, the Minister confirmed the assessments by notice of confirmation dated September 9, 2013 on the basis that the amount of the appellant's "dividend refund" for the year under subsection 129(1) for the 2010 and 2011 taxation years was $1,545 and $2,471, respectively, calculated as follows:

Lesser of:	August 31, 2010	August 31, 2011
(i) 1/3 of taxable dividends paid in the year	$10,833 ($32,500 x 1/3)	$11,167 ($33,500 x 1/3)
and		
(ii) RDTOH at the end of the year under s. 129(3)	$1,545	$2,471

19. The Minister computed the amount of the appellant's "dividend refund" for the year under subsection 129(1) on the basis that the amount under paragraph 129(3)(d), namely the "corporation's dividend refund for its preceding taxation year", was as set out in the table below. The Minister subtracted the respective amount in computing the appellant's refundable dividend tax on hand (colloquially referred to as RDTOH) at the end of taxation year for 2007, 2008, 2009, 2010 and 2011 (as further detailed in **Schedule "A"** attached):

Taxation Year for Computation of RDTOH at end of Taxation Year – s.129(3)	Amount of the Corporation's Dividend Refund for its Preceding Taxation Year – s. 129(3)(d)	Preceding Taxation Year
2007	$0	2006
2008	$24,600	2007
2009	$789	2008
2010	$0	2009
2011	$1,545	2010

20. Further to paragraph 16 above, additional details respecting the appellant's computation of the "dividend refund" for the year claimed by the appellant in respect of the 2010 and 2011 taxation years is set out in **Schedule "B"** attached.

The parties hereto agree that this Statement of Agree Facts does not preclude either party from calling evidence to supplement the facts agreed to herein, it being accepted that such evidence may not contradict the facts agreed.

Schedule "A" - As Computed by the Minister

Taxation Year Ending August 31	**2007**	**2008**	**2009**	**2010**	**2011**
Dividend refund – s. 129(1):					
Lesser of:					
(i) 1/3 of taxable dividends paid in the year	$24,600 ($73,800 x 1/3)	$37,000 ($111,000 x 1/3)	$0	$10,833 ($32,500 x 1/3)	$11,167 ($33,500 x 1/3)
and					
(ii) RDTOH at the end of the year	$25,389	$789	$0	$1,545	$2,471
Amount of "dividend refund for the year":	**$24,600**	**$789**	**$0**	**$1,545**	**$2,471**
RDTOH of corporation at the end of the taxation year – s. 129(3):					
Total of:					
Refundable portion of Part I tax (129(3)(a))[1]	$0	$0	$0	$1,545[2]	$2,471[3]
Total Part IV tax payable for the year	$25,389	$0	$0	$0	$0
RDTOH at the end of preceding taxation year	$0	$25,389	$789	$0	$1,545
Deduct:					
Corporation's dividend refund for its preceding taxation year under s. 129(3)(d)	($0)	($24,600)	($789)	($0)	$1,545
RDTOH of corporation at the end of the taxation year	**$25,389**	**$789**	**$0**	**$1,545**	**$2,471**

[1] The amount under s. 129(3)(a) is the lesser of a series of computations. For present purposes, the amount is 26 2/3% of aggregate investment income.

[2] 26 2/3% of aggregate investment income of $5,792.

[3] 26 2/3% of aggregate investment income of $9,267.

Schedule "B" – As Computed by the Appellant

Taxation Year Ending August 31	**2007**	**2008**	**2009**	**2010**	**2011**
Dividend refund – s. 129(1):					
Lesser of:					
(i) 1/3 of taxable dividends paid in the year	$24,600 ($73,800 x 1/3)	$37,000 ($111,000 x 1/3)	$0	$10,833 ($32,500 x 1/3)	$11,167 ($33,500 x 1/3)
and					
(ii) RDTOH at the end of the year	$25,389	$789	$0	$26,934	$18,572
Amount of "dividend refund for the year":	**$24,600**	**$789**	**$0**	**$10,833**	**$11,167**
RDTOH of corporation at the end of the taxation year – s. 129(3):					
Total of:					
Refundable portion of Part I tax (129(3)(a))[4]	$0	$0	$0	$1,545[5]	$2,471[6]
Total Part IV tax payable for the year	$25,389	$0	$0	$0	$0
RDTOH at the end of preceding taxation year	$0	$25,389	$25,389	$25,389	$26,934
Deduct:					
Corporation's dividend refund for its preceding taxation year under s. 129(3)(d)	($0)	($0)	($0)	($0)	$10,833
RDTOH of corporation at the end of the taxation year	**$25,389**	**$25,389**	**$25,389**	**$26,934**	**$18,572**

[4] The amount under s. 129(3)(a) is the lesser of a series of computations. For present purposes, the amount is 26 2/3% of aggregate investment income.

[5] 26 2/3% of aggregate investment income of $5,792.

[6] 26 2/3% of aggregate investment income of $9,267.

CITATION:	2015TCC85
COURT FILE NO.:	2013-4667(IT)I
STYLE OF CAUSE:	NANICA HOLDINGS LIMITED AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	October 9, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	April 10, 2015

APPEARANCES:

Counsel for the Appellant:	Max Weder
Counsel for the Respondent:	Perry Derksen Shankar Kamath

COUNSEL OF RECORD:

For the Appellant:

Name:	Max Weder
Firm:	Davis LLP

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada