

Docket: 2022-1285(IT)G

BETWEEN:

TAMARA BROWN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Virtual Hearing of Rule 58 Motion on November 5, 2025

Before: The Honourable Justice David E. Spiro

Appearances:

Counsel for the Appellant: Domenic Marciano

Paul Zhang

Elena Kozachek

Counsel for the Respondent: Tyler Alviano

Craig Maw

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**JUDGMENT**

The appeal is dismissed, without costs, as the Court has answered in the affirmative the following question presented by the parties under section 58 of the *Tax Court of Canada Rules (General Procedure)*:

Was the Minister of National Revenue entitled to assess arrears interest of \$16,518.86 and \$38,748.39 when reassessing the Appellant on December 15, 2020, with a view to implementing the Judgment issued by the Court on November 27, 2019?

Signed this 11th day of December 2025.

“David E. Spiro”

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Spiro J.

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Citation: 2025 TCC 184  
Date: 20251211  
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## **REASONS FOR JUDGMENT**

Spiro J.

### **Introduction**

[1] The question in this appeal is whether the Minister of National Revenue (the “Minister”) is entitled to assess arrears interest on a reassessment under subsection 160(1) of the *Income Tax Act* (the “Act”). For the reasons set out below, I have concluded that the Minister is not only entitled but required to assess arrears interest on any such reassessment. Before delving into the workings of subsection 160(1), we shall briefly review assessments more generally under Division I of Part I of the Act and consider what I have called the hypothetical “Base Case”.<sup>1</sup>

[2] When a taxpayer receives a notice of assessment under Part I, they may object to that assessment and, if the dispute remains unresolved, they may appeal that assessment to this Court by filing a Notice of Appeal.

[3] Once the Notice of Appeal has been filed, a lawyer at the Department of Justice (“DOJ”) will be assigned.<sup>2</sup> A Reply will be filed by DOJ counsel. At that

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<sup>1</sup> Division I of Part I of the Act is entitled “Returns, Assessments, Payment and Appeals”. Division I begins with section 150 and ends with section 168.1.

<sup>2</sup> This assumes, of course, that the appeal proceeds under the Court’s General Procedure.

point, counsel for the Appellant may begin discussions with DOJ counsel with a view to settling the appeal.

[4] If the parties settle the appeal, they may file a Consent to Judgment asking the Court, under subparagraph 171(1)(b)(iii), to allow the appeal and send the assessment back to the Minister for reconsideration and reassessment on the basis set out in the Consent to Judgment.

### The Base Case

[5] Assume that an individual taxpayer filed their return for 2009 on the date it was due to be filed (April 30, 2010), reporting taxable income of \$80,000. But they failed to remit their 2009 tax due of \$8,000 on that date.<sup>3</sup>

[6] In assessing for the 2009 taxation year, the Minister assumed that the taxpayer's taxable income for 2009 was \$100,000. The Minister assessed tax of \$10,000 to the taxpayer on that basis. That notice of assessment was sent in May 2010.

[7] The taxpayer objected to that assessment and appealed it to this Court. After pleadings were exchanged, counsel negotiated a settlement. Both parties agreed that the taxpayer's taxable income for 2009 was — and should be reassessed as — \$90,000, resulting in a reassessment of tax of \$9,000.

[8] A Consent to Judgment was filed reflecting the agreement of the parties. The Court issued Judgment in 2020 based on the Consent to Judgment and sent the assessment back to the Minister for reconsideration and reassessment on the basis that the taxpayer's taxable income for 2009 was \$90,000. The reassessment, issued in 2020, included an assessment of tax of \$9,000.

[9] That reassessment also included an assessment of arrears interest on the \$9,000 that both parties agreed the taxpayer was liable to pay on April 30, 2010. Arrears interest ran from the date on which the \$9,000 was due to be paid, April 30, 2010, to the date of the reassessment in 2020.

### Our Case

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<sup>3</sup> The taxation rates in this hypothetical example are exactly that – hypothetical. They are intended to make the numbers as simple as possible.

[10] The specific question raised by this appeal is whether the Minister is entitled to assess arrears interest on reassessing a transferee under section 160(1) which incorporates by reference the same operational provisions as the Base Case set out above.

[11] Subsection 160(1) is a charging provision. It includes no mechanism for assessing. That problem was solved by having subsection 160(2) incorporate by reference into subsection 160(1) all relevant provisions of Division I, including the provisions necessary for the assessment of interest.

[12] Before going any further, it is important to understand the purpose of subsection 160(1). In *Wannan v Canada*, 2003 FCA 423, the Federal Court of Appeal made the following observations:

[2] Section 160 is one of a number of provisions in the *Income Tax Act* that create vicarious or secondary liability for tax debts. Such provisions permit the Minister to collect a tax debt from someone other than the tax debtor, provided certain statutory conditions are met.

...

[3] Section 160 of the *Income Tax Act* is an important tax collection tool, because it thwarts attempts to move money or other property beyond the tax collector's reach by placing it in presumably friendly hands. It is, however, a draconian provision. While not every use of section 160 is unwarranted or unfair, there is always some potential for an unjust result. There is no due diligence defence to the application of section 160. It may apply to a transferee of property who has no intention to assist the primary tax debtor to avoid the payment of tax. Indeed, it may apply to a transferee who has no knowledge of the tax affairs of the primary tax debtor. However, section 160 has been validly enacted as part of the law of Canada. If the Crown seeks to rely on section 160 in a particular case, it must be permitted to do so if the statutory conditions are met.

[13] More recently, in *EyeBall Networks Inc. v Canada*, 2021 FCA 17, the Federal Court of Appeal noted that:

[2] Subsection 160(1) provides that when a person transfers property to a non-arm's length person, the transferee and transferor are jointly and severally liable to pay any amount that the transferor was liable to pay under the Act for the taxation year in which the transfer occurred and any preceding years. Under paragraph 160(1)(e), the transferee's liability is limited to the excess of the fair market value of the property transferred over the fair market value of the consideration given for the property. This provision applies whether or not the transferor or the transferee was aware of any tax liability at the time of the transfer.

...

[44] As affirmed by this Court, the purpose of subsection 160(1) is to protect the tax authorities against any vulnerability that may result from a transfer of property between non-arm's length persons for a consideration that is less than the fair market value of the transferred property (*Canada v. 9101-2310 Québec Inc.*, 2013 FCA 241 at para. 60). The four cumulative criteria triggering the application of subsection 160(1) are “clear” and “self-evident” (*Livingston* at para. 17):

1. The transferor must be liable to pay tax under the Act at the time of the transfer;
2. There must be a transfer of property;
3. The transferee must be a person with whom the transferor was not dealing at arm's length or to an otherwise designated transferee;
4. The fair market value of the property transferred must exceed the fair market value of the consideration given by the transferee for the property.

### A Brief Chronology

[14] In 2010, the Minister sent the Appellant two notices of assessment under subsection 160(1) in the amounts of \$105,000 and \$61,840, respectively (the “original subsection 160(1) assessments”). The Appellant objected to both assessments and appealed them to this Court.

[15] The parties filed a Consent to Judgment asking that the Minister reassess, this time in the amounts of \$25,000 (rather than \$105,000) and \$60,000 (rather than \$61,840), respectively (the “agreed amounts”). The Court issued Judgment on that basis and the Minister reassessed accordingly.

[16] As part of those reassessments, the Minister assessed arrears interest on the agreed amounts from the dates of the original subsection 160(1) assessments in 2010. The Appellant objected to, and appealed from, the Minister’s assessment of arrears interest. The arrears interest at issue is \$16,518.86 (in respect of the \$25,000 reassessment) and \$38,748.39 (in respect of the \$60,000 reassessment).

### The Rule 58 Motion

[17] The parties asked the Court to hear a motion under section 58 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”). As no facts are in dispute, they agreed to put the following question before the Court:

Was the Minister of National Revenue entitled to assess arrears interest of \$16,518.86 and \$38,748.39 when reassessing the Appellant on December 15, 2020, with a view to implementing the Judgment issued by the Court on November 27, 2019?

[18] The Court allowed the Rule 58 motion to proceed. At the commencement of the Rule 58 hearing, the parties confirmed that the Court's decision would dispose of the entire appeal.

### **Subsection 160(1)**

[19] Here are the relevant parts of subsection 160(1):<sup>4</sup>

160(1) Where a person has ... transferred property ... to

...

(c) a person with whom the person was not dealing at arm's length, the following rules apply:

...

(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 limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

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<sup>4</sup> The complete version of subsection 160(1) is reproduced in both official languages at Appendix "A" to these Reasons.

## **The Agreed Facts**

### **The Original Subsection 160(1) Assessments**

[20] The Appellant was originally assessed under subsection 160(1) in 2010. As there were two separate transfers, two separate assessments were issued. The transferor was a non-arm's length corporation (the "tax debtor").

#### **Original Subsection 160(1) Assessment #1 – 2010**

[21] Original subsection 160(1) assessment #1 related to the transfer of real property to the Appellant by the tax debtor in May 2006. Notice of the assessment was sent on September 17, 2010. Under paragraph 160(1)(e), the Appellant was assessed \$105,000, being the lesser of:

- i) the assumed fair market value of the benefit conferred by the tax debtor on the Appellant in respect of the property transferred (\$105,000); and
- ii) the liability of the tax debtor for the 2005 and earlier taxation years as of September 2010 (\$295,481.69).

[22] No arrears interest was assessed to the Appellant on original subsection 160(1) assessment #1.

#### **Original Subsection 160(1) Assessment #2 – 2010**

[23] Original subsection 160(1) assessment #2 related to the transfer of cheques to the Appellant by the tax debtor. The cheques were deposited to the Appellant's bank account in February 2005.

[24] Notice of the assessment was sent on November 22, 2010. Under paragraph 160(1)(e), the Appellant was assessed \$61,840, being the lesser of:

- i) the amount of cheques transferred by the tax debtor to the Appellant (\$61,840); and
- ii) the liability of the tax debtor for the 2005 and earlier taxation years as of November 2010 (\$298,124.24).

[25] No arrears interest was assessed to the Appellant on original subsection 160(1) assessment #2.

### The Notice of Appeal

[26] In October of 2014, the Appellant filed a Notice of Appeal in respect of both original subsection 160(1) assessments (2014-3843(IT)G).

### The Consent to Judgment

[27] In July of 2019, the parties filed a Consent to Judgment to settle the appeal of the original subsection 160(1) assessments.

[28] The Consent to Judgment provided that the appeal of original subsection 160(1) assessment #1 would be allowed and referred back to the Minister for reconsideration and reassessment on the basis that original subsection 160(1) assessment #1 would be reduced from \$105,000 to \$25,000.

[29] The Consent to Judgment also provided that the appeal of original subsection 160(1) assessment #2 would be allowed and referred back to the Minister for reconsideration and reassessment on the basis that original subsection 160(1) assessment #2 would be reduced from \$61,840 to \$60,000.

### The Judgment

[30] On November 27, 2019, the Court issued Judgment allowing the appeals of both original subsection 160(1) assessments on the terms set out in the Consent to Judgment.

#### Subsection 160(1) Reassessment #1 – 2020

[31] On December 15, 2020, the Minister sent a notice to the Appellant of a reassessment in the aggregate amount of \$41,518.86, comprised of:

- (a) \$25,000, being the agreed amount; and
- (b) arrears interest of \$16,518.86 from the date of original subsection 160(1) assessment #1 on September 17, 2010, to the date of reassessment on December 15, 2020.

#### Subsection 160(1) Reassessment #2 – 2020

[32] On December 15, 2020, the Minister sent a notice to the Appellant of a reassessment in the aggregate amount of \$98,748.39, comprised of:

- (a) \$60,000, being the agreed amount; and
- (b) arrears interest of \$38,748.39 from the date of original subsection 160(1) assessment #2 on November 22, 2010, to the date of reassessment on December 15, 2020.

### The Present Appeal

[33] The Appellant has appealed each of the subsection 160(1) reassessments, but only with respect to the Minister's assessment of arrears interest of \$16,518.86 and \$38,748.39.

### The Appellant's Argument

[34] Once again, here are the relevant parts of subsection 160(1):

160(1) Where a person has ... transferred property ... to

...

(c) a person with whom the person was not dealing at arm's length, the following rules apply:

...

(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 limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

[35] The Appellant asks the Court to focus almost exclusively on paragraph 160(1)(e) because, in the Appellant’s submission, the aggregate amount of the subsection 160(1) reassessments, *including interest*, is limited to the lesser of the two amounts set out in paragraph 160(1)(e).

[36] According to the Appellant, paragraph 160(1)(e) functions as an overarching statutory limit on the aggregate amount, *including interest*, that the Minister may assess against a transferee. The Appellant says that the closing words of subsection 160(1) which, at first glance, appear to allow an unlimited assessment of interest, are themselves subject to the aggregate limit set out in paragraph 160(1)(e).

[37] The Appellant goes even further and submits that the Minister is never entitled to *assess* arrears interest against a transferee. Counsel for the Appellant does concede that arrears interest *runs* against a transferee, but only from the date of reassessment. Why is that so? Because the concluding words of subsection 160(1) allow interest to run against a transferee “on an assessment”. The Appellant interprets those words to mean that arrears interest can only run against a transferee “as of the date of an assessment”. Based on the closing words of subsection 160(1), the Appellant says that arrears interest runs against the Appellant but only as of the date of the subsection 160(1) reassessments in 2020. Counsel also contends that any such “go forward interest”, as he calls it, is subject to the overarching aggregate limit set out in paragraph 160(1)(e).

[38] When asked about the application of subsection 160(2), the Appellant says that the “balance-due day” in the context of the subsection 160(1) reassessments cannot be the date of the original subsection 160(1) assessments in 2010. Why is that so? Because a reassessment necessarily supersedes an earlier assessment under what is generally referred to as the *Abrahams* principle. In *Savics v Canada*, 2021 FCA 56, that principle was summarized by the Federal Court of Appeal:

[45] In *Coleman C. Abrahams [No. 1] v. Minister of National Revenue*, [1966] C.T.C. 690, 66 D.T.C. 5451 (Ex. Ct.), the Exchequer Court found that when a subsequent reassessment is issued, “the first reassessment is displaced and becomes a nullity”. In *Bowater Mersey Paper Co. v. Canada*, [1987] 2 C.T.C. 159, 87 D.T.C. 5382 (FCA), this Court explained that a subsequent reassessment replaces a prior reassessment with the result that the prior reassessment is “no longer in existence”. This is also confirmed by this Court in *TransCanada Pipelines Ltd. v. Canada*, 2001 FCA 314, at paragraph 12 where this Court noted that previous “notices of reassessment became nullities” and “ceased to exist” when subsequent reassessments were made.

[39] Once the subsection 160(1) reassessments were issued, the dates on which the original subsection 160(1) assessments were sent in 2010 no longer serve as the balance-due day for computing arrears interest on the subsection 160(1) reassessments because the Appellant is no longer liable under those superseded assessments.

[40] In light of the *Abrahams* principle, argues the Appellant, the balance-due day must be the date of the subsection 160(1) reassessments. After all, the closing words of subsection 160(1) only allow the Minister to assess interest “on an assessment” and the word “assessment” cannot possibly refer to an assessment that has ceased to exist.

## **Analysis**

### **Subsection 160(2) Makes the Base Case Applicable**

[41] Subsection 160(2) makes the Base Case applicable to assessments under subsection 160(1) with any modifications that the circumstances require:

160(2) ... the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

[42] What are the statutory elements of the Base Case? First and foremost, subsection 161(1) provides that interest accrues when tax is unpaid as of a taxpayer’s balance-due day:

161(1) Where at any time after a taxpayer’s balance-due day for a taxation year

- (a) the total of the taxpayer’s taxes payable under this Part ... for the year exceeds
- (b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer’s tax payable and applied as at that time by the Minister against the taxpayer’s liability for an amount payable under this Part ... for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

[43] Arrears interest compensates the Crown for the taxpayer's use of funds payable to the Crown from the time the amount was due until the time the amount was paid. If a taxpayer fails to remit the amount of tax required by the Act when due, the Crown is deprived of revenue until the underpayment is corrected through payment.

[44] Under the Base Case, when the Minister reassesses a taxpayer to adjust the tax payable for a year, the adjusted amount becomes the amount that was payable under the Act as at the balance-due day for that year. No one would seriously contend that the taxpayer's adjusted liability takes effect *prospectively* from the date of the reassessment. But that is exactly what the Appellant submits here. The admonition offered by the Federal Court of Appeal in *Canada v Zelinski*, 1999 CanLII 9255 (FCA), [2000] 1 CTC 329, 2000 DTC 6001 (FCA), is instructive:

[44] The taxpayers' arguments are also inconsistent with the plain language of subsection 161(1) of the Act, which permits the Minister to impose interest for the period during which excess taxes are "outstanding." "Outstanding" is broadly defined in the third edition of *The Shorter Oxford Dictionary* as "that stands over; that remains undetermined, unsettled, or unpaid." Simply put, taxes that a taxpayer underestimates from his or her tax return are unpaid and are therefore outstanding, regardless of the date on which the Minister reassesses the taxpayer.

[Emphasis added]

### Text, Context and Purpose

[45] We now turn to the text, context, and purpose of the relevant provisions of the Act to determine whether the Minister was entitled to assess arrears interest on subsection 160(1) reassessments #1 and #2 in 2020.<sup>5</sup>

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<sup>5</sup> For a recent restatement by the majority of the Supreme Court of Canada of the modern principle of statutory interpretation, see *Lundin Mining Corp. v Markowich*, 2025 SCC 39:

[46] ... A statutory provision is interpreted based on its text, context, and purpose to find a meaning that is harmonious with the legislation as a whole (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 117).

Text

[46] Once again, here are the relevant parts of subsection 160(1):

160(1) Where a person has ... transferred property ... to

...

(c) a person with whom the person was not dealing at arm's length,  
the following rules apply:

...

(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 limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

[47] The limitation set out in paragraph 160(1)(e) is clear and unambiguous. As the Federal Court of Appeal noted in *Waugh v Canada*, 2008 FCA 152:

[2] ... the provisions of paragraph 160(1)(e) of the ITA ... stipulate that the joint and several liability of the transferor and the transferee will be limited to the lesser of two amounts. The first amount is the amount, if any, by which the fair market value of the transferred property at the time of the transfer exceeds the fair market value, at that time, of the consideration that has been given by the transferee to the transferor for the property. The second amount is, essentially, the amount of the outstanding liability of the transferor under the ITA.

[48] It is as simple as that. The joint and several liability of the transferor and transferee is limited to the lesser of (i) the FMV of the property transferred and (ii) the tax debts of the transferor. Nothing in the text of the provision suggests that either of those amounts includes arrears interest.

[49] The closing words of subsection 160(1) function as a “notwithstanding” clause. Notwithstanding the limitation set out in paragraph 160(1)(e) above, “nothing in this subsection limits the liability … of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.”

[50] The French version of the closing words of subsection 160(1)<sup>6</sup> opens with the word “Toutefois” which, under the shared meaning approach to the interpretation of bilingual legislation,<sup>7</sup> makes it clear that Parliament intended the closing words of subsection 160(1) to function as a “notwithstanding” clause. Indeed, the closing words are framed in the French version as an entirely new sentence:

Toutefois, le présent paragraphe n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi ni celle du bénéficiaire du transfert quant aux intérêts dont il est redevable en vertu de la présente loi sur une cotisation établie à l'égard du montant qu'il doit payer par l'effet du présent paragraphe.

[51] What is “the amount that the transferee is liable to pay because of this subsection” on which arrears interest is assessed? It must be the result of applying paragraph 160(1)(e) immediately preceding those words. Arrears interest must be assessed *on* something. That something must be the lesser of the two amounts set out in paragraph 160(1)(e).

[52] Finally, the Appellant’s argument runs aground on the shoals of the closing words of subsection 160(1): “nothing in this subsection limits the liability … of the transferee for the interest that the transferee is liable to pay … ”. If Parliament has told us that *nothing* in subsection 160(1) limits the liability of the transferee for interest, how could anyone argue that *something* in that subsection – namely paragraph 160(1)(e) – limits the liability of the transferee for interest?

### Context and Purpose

#### The Immediate Statutory Context

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<sup>6</sup> The French version of subsection 160(1) is reproduced in full at Appendix “A” to these Reasons.

<sup>7</sup> *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at paragraph 203, as cited at paragraph 37 of *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28.

[53] Within the immediate statutory context of subsection 160(1) we find subsection 160(2). It provides that:

160(2) ... the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

[Emphasis added]

[54] In subsection 160(2), Parliament has expressly provided the Minister with the statutory machinery necessary to effect an assessment made under subsection 160(1). What is left unsaid within the four corners of subsection 160(1) has been provided by Parliament by reference to the Base Case which must be applied in the context of a subsection 160(1) reassessment with any modifications that the circumstances require.

[55] First, the combined effect of subsections 156.1(4) and 161(1) require the Minister to assess interest to an individual who has not, on or before the balance-due day for a particular taxation year, paid to the Receiver General the tax payable for the year:

156.1(4) Every individual shall, on or before the individual's balance-due day for each taxation year, pay to the Receiver General in respect of the year the amount, if any, by which the individual's tax payable under this Part for the year exceeds the total of

- (a) all amounts deducted or withheld under section 153 from remuneration or other payments received by the individual in the year, and
- (b) all other amounts paid to the Receiver General on or before that day on account of the individual's tax payable under this Part for the year.

...

161(1) Where at any time after a taxpayer's balance-due day for a taxation year

- (a) the total of the taxpayer's taxes payable ... for the year exceeds
- (b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable ...,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

[56] Second, subsections 156.1(4) and 161(1) require arrears interest to run as of the balance-due day of a taxpayer for a taxation year. Subsection 248(1) defines the “balance-due day” of an individual taxpayer for a taxation year as April 30 of the following year.

[57] Third, subsection 152(1) requires the Minister to examine, with all due dispatch, a taxpayer’s return for a taxation year and assess tax for the year, along with interest and penalties, if any.

[58] Fourth, subsection 152(4) allows the Minister to reassess within the normal reassessment period which, for an individual taxpayer, is the period ending three years after the day of sending of a notice of an original assessment (paragraph 152(3.1)(b)).

[59] Applying the provisions of Division I to a reassessment under subsection 160(1) with any modifications that the circumstances require, what is the balance-due day? There are three possibilities:

- (a) The date on which the property was transferred;
- (b) The date on which the original subsection 160(1) assessment was sent; or
- (c) The date on which the subsection 160(1) reassessment was sent.

[60] The date on which the property was transferred cannot be the balance-due day as the closing words of subsection 160(1) refer to “the interest that the transferee is liable to pay under this Act *on an assessment*” not “the interest that the transferee is liable to pay under this Act *on a transfer of property*”. This makes sense as the provision is already draconian.<sup>8</sup> It would be doubly draconian if arrears interest began to run against a transferee as of the date of the transfer of the relevant property. It is only as of the date of the original subsection 160(1) assessment that the transferee will have notice of any liability.<sup>9</sup>

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<sup>8</sup> See paragraph 3 of *Wannan v Canada*, 2003 FCA 423 quoted at paragraph 12 above.

<sup>9</sup> The date of the original subsection 160(1) assessment serves the same notice function here as April 30 of the following year serves for annual assessments. They both serve as notice to the

[61] The closing words of subsection 160(1) refer to “the interest that the transferee is liable to pay under this Act on an assessment”. Given the text, and the immediate statutory context, the balance-due day cannot be anything but the day on which the Minister sent the original subsection 160(1) assessment.

### The Internal Statutory Context

[62] Once again, here are the relevant parts of subsection 160(1):

160(1) Where a person has ... transferred property ... to

...

(c) a person with whom the person was not dealing at arm’s length, the following rules apply:

...

(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 limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

[63] Each provision of the Act has a logical internal organization. First comes a section, then a subsection, then a paragraph, then a subparagraph, then a clause, then a subclause.<sup>10</sup> Paraphrased in the interest of brevity, here is how Parliament has arranged the relevant provisions:

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taxpayer of their exposure to arrears interest from that date onward to the extent the liability remains unpaid.

<sup>10</sup> Ted Cook, *Canadian Tax Research: A Practical Guide*, 5th ed (Toronto: Carswell, 2010), at 22-23.

Opening words of subsection 160(1) – Where a person has transferred property to

...

Paragraph 160(1)(c) – a person with whom the person was not dealing at arm's length

...

Paragraph 160(1)(e) – the transferee and transferor are jointly liable to pay under the Act an amount equal to the lesser of

Subparagraph 160(1)(e)(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

Subparagraph 160(1)(e)(ii) – the total of all amounts each of which is an amount that the transferor is liable to pay under the Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year

Closing words of subsection 160(1) – but nothing in subsection 160(1) limits the liability of ... the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of subsection 160(1).

[64] The Appellant contends that paragraph 160(1)(e) overrides the concluding words of subsection 160(1). But, with respect, that turns the entire provision on its head. The concluding words of subsection 160(1), which expressly allow the Minister to assess arrears interest, apply to the lesser of the two amounts set out immediately above those words.

[65] The organization of subsection 160(1) supports the conclusion that arrears interest is assessed on the lesser of the two amounts set out in paragraph 160(1)(e).

The Judicial Context and Legislative Purpose

[66] Before additions were made to the closing words of subsection 160(1) in 2013, the relevant parts of that subsection read:<sup>11</sup>

160(1) Where a person has ... transferred property ... to

...

(c) a person with whom the person was not dealing at arm's length, the following rules apply:

...

(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.

[67] The additional words added by Parliament in 2013 were enacted in response to the decision of this Court in *Algoa Trust v The Queen*, 1998 CanLII 31487 (TCC), [1998] 4 CTC 2001, 98 DTC 1614 (TCC), in which Judge Dussault arrived at the conclusion that the Minister was not entitled to assess interest to a transferee under the wording of subsection 160(1) as it then read:

[3] The rule stated in s.160 of the Act does not have the effect of creating a tax debt. The effect of the provision is not to create a second debt: there is only one tax debt. The wording of the Act is quite clear: the purpose of s.160 is essentially to add another debtor who is jointly and severally liable with the transferor. This new debtor is called the transferee. There is thus no new debt created under the Act and the obligation arises not from the assessment but from the Act itself. Fundamentally, therefore, there is only one debt and only that debt can bear interest.

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<sup>11</sup> The complete version of the pre-amendment version of subsection 160(1) is reproduced in both official languages at Appendix “B” to these Reasons.

[4] First, subsection (1) of s. 160 in fact states that the transferee is jointly and severally liable and that his or her liability is limited to the lesser of the two amounts mentioned in s.160(1)(e)(i) and (ii), namely (i) the value of the property transferred less the consideration, and (ii) the total of all amounts which the transferor is liable to pay in or in respect of the year of the transfer or any preceding year, that is to say, for the year of the transfer and for any preceding years.

[5] Secondly, s.160(2) provides that the Minister of National Revenue ("the Minister") may at any time make an assessment. This is also quite clear. However, the limit imposed in s.160(1)(e) must be observed for each assessment.

[6] Thirdly, I would say that there is no provision of the Act regarding interest that may be applicable to an assessment issued pursuant to s.160 of the Act. This is logical, since there is no new tax debt and an assessment under s.160 already incorporates the interest which the transferor owed in addition to the tax. The assessment may also incorporate penalties and interest thereon.

[Emphasis added]

[68] In response, Parliament amended the closing words of subsection 160(1) with respect to assessments made after December 20, 2002. This is the amended version of the closing words of subsection 160(1) which apply to the reassessments at issue in this appeal:

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

[69] At the same time, arguably by way of "belt and suspenders", Parliament amended subsection 160(2) by adding the bracketed words:

160(2) ... the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

[Emphasis added]

[70] The Technical Notes issued by the Department of Finance confirm that the 2013 amendments were intended to clarify that transferees are liable for arrears interest:<sup>12</sup>

The amount that a taxpayer is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 160(1). The Minister may assess the taxpayer for such a liability under subsection 160(2). Paragraph 160(1)(e) is amended, in respect of assessments made after December 20, 2002, to clarify that the assessment of the taxpayer is subject to interest, without any limit on the amount of interest for which the taxpayer may be liable.

[Emphasis added]

[71] The Federal Court of Appeal also confirmed, in *obiter*, that the 2013 amendments were intended to clarify that transferees are liable for arrears interest. In *1455257 Ontario Inc. v Canada*, 2021 FCA 142, the Federal Court of Appeal observed that the 2013 amendments confirmed “in express terms” that interest accrues on an assessment under subsection 160(1) and “conclusively settled” the debate around whether the Minister was entitled to assess arrears interest to a transferee:

[50] I note in closing that *Montreuil* left open the question whether interest accrues on the liability of the transferee once a subsection 160(1) assessment has been issued (*Montreuil* at para. 42). This issue became controversial when the Tax Court held that interest does not accrue during this period (*Algoa Trust v. Canada*, 1998 CanLII 31487 (TCC), [1998] T.C.J. No. 292) and this Court later expressed the contrary view in the course of an *obiter dictum* (*Zen v. Canada (National Revenue)*, 2010 FCA 180 at paras. 42-46). Although this issue does not arise here, I believe that it is useful to say that it was conclusively settled by the amendment brought to the closing paragraph of subsection 160(1) in 2013, which confirms in express terms that interest accrues on an assessment issued under this provision.

[Emphasis added]

[72] It is the combination of the closing words of subsection 160(1) and the incorporation by reference provisions of subsection 160(2) that lead me to reject the Appellant’s entire argument.

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<sup>12</sup> Canada, Department of Finance, *Explanatory Notes Relating to the Income Tax Act, the Excise Tax Act and Related Legislation* (Ottawa: Department of Finance, October 2012) at 410.

## **Conclusion**

[73] Appellant's counsel is correct to cite *Abrahams* as authority for the proposition that once the subsection 160(1) reassessments were sent to the Appellant in 2020, they were the only assessments in existence. But that has no effect on the balance-due day that had already been established on the date of the original subsection 160(1) assessments in 2010.

[74] I also agree with Appellant's counsel that the Appellant is no longer liable under the original subsection 160(1) assessments. But two things can be true at once – that the Appellant is no longer liable under the original subsection 160(1) assessments *and* that the dates on which those assessments were sent is the balance-due day for the agreed amounts under the closing words of subsection 160(1).

[75] Finally, there is nothing in the text, context, or purpose of paragraph 160(1)(e) to suggest that it constitutes an overriding or overarching aggregate liability limit on the *total* amount that may be assessed against a transferee, including arrears interest. On the contrary. Parliament has clarified, clearly and unambiguously, that transferees are liable for arrears interest.

[76] The Court, therefore, answers in the affirmative the following question presented by the parties under section 58 of the *Tax Court of Canada Rules (General Procedure)*:

Was the Minister of National Revenue entitled to assess arrears interest of \$16,518.86 and \$38,748.39 when reassessing the Appellant on December 15, 2020, with a view to implementing the Judgment issued by the Court on November 27, 2019?

[77] Indeed, not only is the Minister entitled to assess arrears interest against a transferee, but the Minister is *required* to do so under the Act.

[78] As the parties have agreed that no costs should be awarded, the appeal of each of the subsection 160(1) reassessments will be dismissed without costs.

Signed this 11th day of December 2025.

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“David E. Spiro”

Spiro J.

## APPENDIX “A”

<b>Current version</b>	<b>Version actuelle</b>
<p>160 (1) 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</p> <p>(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,</p> <p>(b) a person who was under 18 years of age, or</p> <p>(c) a person with whom the person was not dealing at arm's length,</p> <p>the following rules apply:</p> <p>(d) the transferee and transferor are jointly and severally, or solidarily, 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 <i>Income Tax Act</i>, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so</p>	<p>160 (1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes:</p> <p>a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;</p> <p>b) une personne qui était âgée de moins de 18 ans;</p> <p>c) une personne avec laquelle elle avait un lien de dépendance,</p> <p>les règles suivantes s'appliquent:</p> <p>d) le bénéficiaire du transfert et l'auteur du transfert sont solidiairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la <i>Loi de l'impôt sur le revenu</i>, chapitre 148 des Statuts revisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y</p>

<p>transferred or property substituted for it, and</p> <p>(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of</p> <p>(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</p> <p>(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,</p> <p><b>but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an</b></p>	<p>substitués ou à l'égard de tout gain tiré de la disposition de tels biens;</p> <p>e) le bénéficiaire du transfert et l'auteur du transfert sont solidiairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants:</p> <p>(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,</p> <p>(ii) le total des montants représentant chacun un montant que l'auteur du transfert doit payer en vertu de la présente loi (notamment un montant ayant ou non fait l'objet d'une cotisation en application du paragraphe (2) qu'il doit payer en vertu du présent article) au cours de l'année d'imposition où les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années.</p> <p><b>Toutefois, le présent paragraphe n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi ni celle du bénéficiaire du transfert quant</b></p>
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<b>assessment in respect of the amount that the transferee is liable to pay because of this subsection.</b>	<b>aux intérêts dont il est redevable en vertu de la présente loi sur une cotisation établie à l'égard du montant qu'il doit payer par l'effet du présent paragraphe.</b>
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## APPENDIX “B”

<b>Pre-amendment version</b>	<b>Version antérieure à la modification</b>
<p>160 (1) 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</p> <p style="margin-left: 40px;">(a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,</p> <p style="margin-left: 40px;">(b) a person who was under 18 years of age, or</p> <p style="margin-left: 40px;">(c) a person with whom the person was not dealing at arm's length,</p> <p>the following rules apply:</p> <p style="margin-left: 40px;">(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</p>	<p>160 (1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes:</p> <p style="margin-left: 40px;">a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;</p> <p style="margin-left: 40px;">b) une personne qui était âgée de moins de 18 ans;</p> <p style="margin-left: 40px;">c) une personne avec laquelle elle avait un lien de dépendance,</p> <p>les règles suivantes s'appliquent:</p> <p style="margin-left: 40px;">d) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la Loi de l'impôt sur le revenu, chapitre 148 des Statuts revisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens;</p>

<p>(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of</p> <p>(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</p> <p>(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,</p> <p><b>but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.</b></p>	<p>e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants:</p> <p>(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,</p> <p>(ii) le total des montants dont chacun représente un montant que l'auteur du transfert doit payer en vertu de la présente loi au cours de l'année d'imposition dans laquelle les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années;</p> <p><b>aucune disposition du présent paragraphe n'est toutefois réputée limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi.</b></p>
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CITATION: 2025 TCC 184

COURT FILE NO.: 2022-1285(IT)G

STYLE OF CAUSE: TAMARA BROWN AND HIS MAJESTY THE KING

PLACE OF HEARING: Virtual Hearing of Rule 58 Motion

DATE OF HEARING: November 5, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: December 11, 2025

APPEARANCES:

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