VAR

I HEREBY CERTIFY that the above document is a true copy of the original filed at the Registry of the Tax Court of Canada. / Je CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au greffe de la Cour canadienne de l'impôt.

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Dated / Fait le

For the Registrar / Pour le Greffier
CHRISTIAN PRESBER
Registry Officer / Agent du greffe

2015-1070(IT)G

TAX COURT OF CANADA

BETWEEN:

PETER MARSHALL COOPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REPLY

In reply to the Appellant's Notice of Appeal with respect to the 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 taxation years, the Deputy Attorney General of Canada says:

Overview

A. The Appellant and his sons purported to gift their wealth, exceeding CAD$25,000,000, for investing in an offshore company in the Isle of Man created for this purpose. Under this structure, the Appellant paid fees to various parties to run the offshore company and matters related to it at his and his sons' behest, and to pay out the company's earnings and funds to him and his sons as and when requested.

B. For over eight years, the Appellant, a Canadian resident, along with his sons, earned income from their foreign investments exceeding CAD$4 million, which they did not report. Instead, the Appellant reported taxable income disproportionate to the lifestyle he enjoyed.

C. The offshore company structure used by the Appellant and his sons is a sham. The parties to the structure wilfully presented its transactions as being different from what they knew them to be. All parties knew that the Appellant and his sons controlled the offshore company and intended to reacquire the funds introduced to accounts held in its name. The offshore company structure was an attempt to generate tax-free income for the Appellant and his sons and to avoid foreign reporting obligations.

I STATEMENT OF FACTS

Notice of Appeal

D. Unless expressly admitted, he denies the facts alleged in the Notice of Appeal.

E. With respect to the facts alleged under the heading "Address of the Appellant" in the Notice of Appeal:

1. He admits the facts stated in paragraph 1 and he has no knowledge of the facts alleged in paragraph 2.

F. With respect to the facts alleged under the heading "Assessments under appeal" in the Notice of Appeal:

1. With respect to paragraphs 3, 4 and 5, he states that the Minister of National Revenue (the "Minister") assessed the Appellant as set out herein.

2. He admits the facts stated in paragraphs 6 and 7.

G. With respect to the facts alleged under the heading "The Appellant" in the Notice of Appeal:

1. With respect to paragraph 8, he admits that the Appellant is 85 years old, and he has no knowledge of the remaining facts alleged in that paragraph.

2. With respect to paragraph 9, he admits only that the Appellant, his spouse and their three children resided in South Africa until the early 1990s, he denies the remaining facts alleged in that paragraph, and he states that the Appellant and his sons Marshall Cooper and Richard Cooper (collectively, the "Coopers") were all involved with and aware of the planning and decision-making process regarding Ogral Company and they attended various meetings in that respect.

3. With respect to paragraphs 10 and 11, he admits only that the Appellant caused to be created a corporate and trust structure and that the Appellant remained a beneficiary of the structure, and he states that it was in the mid-1990s that the Appellant caused the disposition of his multiple businesses.

4. He admits the facts stated in paragraphs 12 and 13.

5. With respect to paragraphs 14 and 15, he admits only that the Appellant caused to be created Ogral Trust, that the Appellant was a beneficiary of Ogral Trust, that the Appellant dealt with Ernst & Young and that he emigrated to Canada so as to be exempt from Canadian tax on a trust structure, and he states that the Appellant was a resident of Canada as of July 26, 1996, Marshall Cooper was a resident of Canada as of November 1997 and Richard Cooper was a resident of Canada as of June 1998.

6. With respect to paragraph 16, he admits that section 94 of the *Income Tax Act* went through changes, and he has no knowledge of, and puts in issue, the remaining facts alleged in that paragraph.

7. With respect to paragraphs 17 and 18, he denies that the Trustees sought advice, he admits that there is a written opinion by KPMG, and he states that it was the Appellant who sought advice, and the Appellant sought that advice from his Victoria based chartered accountant Derrold Norgaard of KPMG as he knew that the Canadian five year immigration trust "tax holiday" period was nearing expiration.

8. With respect to paragraphs 19 and 20 of the Notice of Appeal, he admits only that Ogral Company was incorporated in the Isle of Man on December 19, 2001, he clarifies that the corpus of Ogral Trust was transferred to Ogral Company on January 1, 2003, and he states that the transferred assets (corpus) always remained in the hands of the Coopers.

H. With respect to the facts alleged in paragraphs 21 through 32 under the heading "Ogral Company" in the Notice of Appeal:

1. He admits the facts alleged in subparagraph 21(a).

2. With respect to subparagraphs 21(b), (c), (d) and (e), he admits that Ogral Company had two classes of voting shares, and the shareholders of record were Lochside Limited and Korderry Limited, respectively. He states that Lochside Limited and Korderry Limited were provided as shareholders of record by a corporate service provider in the Isle of Man, and their business was investment holding company and nominee services, respectively. He expressly denies that Lochside Limited or Korderry Limited had any actual entitlement to Ogral Company but for £50, they were not allowed to sell their shares, they were not able to participate in Ogral Company's earnings, they were not allowed any dividends at Ogral Company's liquidation beyond £50, and they held the shares as nominees for the Coopers.

3. With respect to subparagraph 21(f) and paragraphs 27 and 28, he admits only that there are constating documents of Ogral Company that define "Eligible Persons". He states that the constating documents ensured that the property (money) of Ogral Company remained with the Coopers and ensured the Coopers' access to that money at any time. He expressly denies that the directors of record gave due consideration in accordance with their fiduciary obligations to the Coopers' requests for money, and he states that the Coopers were never refused any request for payment from Ogral Company and could not be refused, and further that the directors of record had to obey the Coopers or the Coopers would cause Ogral Company to be wound up and the money returned to them.

4. With respect to subparagraphs 21(g), (h) and (i), he admits only that Ogral Company had a non-shareholder member including those named in subparagraph (g) and the directors of record named in subparagraph (h). He expressly denies that the directors of record and the non-shareholder member had any authority or influence over any matters respecting Ogral Company, and he states that that control lay with the Coopers, the directors of record were agents and nominees of the Coopers and the Coopers controlled the non-shareholder member.

5. He denies the facts alleged in paragraphs 22, 23, 24 and 25, and he states that the Coopers were the *de facto* and true shareholders and the *de facto* and true directors of Ogral Company, the shareholders of record and directors of record were agents or nominees of the Coopers, and the Coopers controlled Ogral Company and its property by controlling the non-shareholder member.

6. He denies the facts alleged in paragraph 26.

7. With respect to paragraphs 29, 30 and 31, he denies that Ogral Company on the authority of its directors retained the parties listed in those paragraphs, he states that the Coopers caused those parties to be retained, he admits that those parties were paid for their services, he denies that Simcocks Trust Limited managed investments of Ogral Company and he states that Simcocks Trust Limited only prepared the financial statements of Ogral Company and filed its tax returns in the Isle of Man, he states that the Coopers had long been clients of UBS AG, and he states that Simcocks Trust Limited was the sole shareholder of Lochside Limited and Lochside Limited is one of the shareholders of record of Ogral Company.

8. With respect to paragraph 32, he admits that Ogral Company traded marketable securities, making frequent transactions including extensive buying and selling and he states that Ogral Company's portfolio included a continuous mix of liquidity, bonds, equities and alternative investments in different currencies, he admits that Ogral Company earned interest and dividend income, he denies that the securities were not actively traded, he admits that Ogral Company incurred some expenses not in excess of those allowed by the Minister, and he states that the accounts held in the name of Ogral Company earned income as detailed in the attached Schedule "B".

I. With respect to the facts alleged under the heading "IV. Appellant's tax filing and the Minister's reassessments" in the Notice of Appeal:

1. With respect to paragraphs 33, 34 and 35, he admits that the filing, initial assessment and reassessment dates are as detailed and that the Minister reassessed the Appellant for foreign reporting penalties for failing to file the required foreign reporting forms T1135 as and when required under subsections 162(7), 162(10) and 162(10.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "Act"), unreported income, and gross negligence penalties under section 163(2).

2. With respect to paragraphs 36, 37, 38 and 39, he states that the Minister's position and assumptions are set out herein. The Respondent denies any allegations made in those paragraphs that are inconsistent with this pleading and he puts the Appellant to the strict proof of any allegations that are not addressed herein.

J. He denies all remaining facts alleged in the Notice of Appeal.

K. In filing his tax returns for the years in issue, the Appellant reported total income and taxable income, paying total income tax of $319, as follows:

Taxation year	**Total income**	**Taxable income**	**Federal and Provincial tax payable**
2003	$1,752	$1,751	Nil
2004	$3,957	$3,742	Nil
2005	$266	($1)	Nil
2006	$12,750	$12,483	Nil
2007	$17,576	$17,576	$319
2008	$6,534	$6,428	Nil
2009	$6,342	$6,341	Nil
2010	$7,016	$7,015	Nil

L. For each of the years in issue, the Appellant failed to report income, and the Appellant also failed to file foreign reporting forms T1135 as and when required in respect of foreign property (i.e., funds in foreign bank accounts held in the name of Ogral Company Limited, an Isle of Man company, for the Coopers, or shares in Ogral Company Limited held by registered shareholders for the Coopers), and having foreign property exceeding a cost of $100,000 each year, with reference to section 233.3 of the Act.

Assessments

M. The Minister initially assessed the Appellant's 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 taxation years as filed.

N. The Minister reassessed the Appellant and accordingly issued notices on the following dates (the "Reassessments"):

1. on March 20, 2012, the Minister reassessed the Appellant for foreign reporting penalties for failing to file the required foreign reporting forms T1135 as and when required for the 2003 through 2010 taxation years; and

2. on March 22, 2012, the Minister reassessed the Appellant for unreported amounts of income/loss, and on March 26, 2012, the Minister reassessed the Appellant for unreported income/loss for the 2003 through 2010 taxation years as detailed in the attached Schedule "D" and assessed subsection 163(2) gross negligence penalties on the unreported amounts for 2004, 2005, 2007 and 2010 pursuant to the Act.

The Reassessments assessed the following (all currency amounts are in Canadian dollars unless otherwise noted):

Unreported income and loss and gross negligence penalty

Taxation Year	**Unreported interest and other investment income (line 121); or carrying charges (line 221)**	**Gross negligence penalty (ss. 163(2))**
2003	($3,380,964)	Nil
2004	$2,462,955	$352,560
2005	$3,288,113	$471,007
2006	($1,623,370)	Nil
2007	$2,135,410	$306,735
2008	($768,206)	Nil
2009	($382,211)	Nil
2010	$1,810,667	$256,918
Total	**$3,542,394**	**$1,387,220**

Foreign reporting penalties

Taxation Year	Unreported offshore bank accounts	ss.162(7) penalty	ss. 162(10) penalty	ss. 162(10.1) penalty	Total
2003	$14,128,310	$2,500	$9,500	$694,416	$706,416
2004	$15,002,188	$2,500	$9,500	$738,109	$750,109
2005	$15,558,853	$2,500	$9,500	$765,943	$777,943
2006	$16,669,109	$2,500	$9,500	$821,455	$833,455
2007	$16,956,578	$2,500	$9,500	$835,829	$847,829
2008	$17,885,151	$2,500	$9,500	$882,258	$894,258
2009	$15,306,858	$2,500	$7,000		$9,500
2010	$15,495,291	$2,500	$1,000		$3,500
Total foreign reporting penalties		$20,000	$65,000	$4,738,010	**$4,823,010**

The Minister reassessed the Appellant on the income earned in the name of Ogral Company Limited ("Ogral"). The bank and investment accounts held in Ogral's name, and also Ogral's directors of record, and shareholders of record were put in place to deceive the Minister, and each, individually or collectively, constitute a sham. The Appellant and his sons were the beneficial and true owners of those bank and investment accounts as Ogral was holding same as agent or nominee for them. Furthermore, the Appellant and his sons were *de facto* shareholders of Ogral, and also were *de facto* directors of Ogral.

The Minister reassessed the Appellant beyond the normal reassessment period pursuant to subsection 152(4) of the Act for unreported income for the 2004, 2005 and 2007 taxation years, and for foreign reporting penalties for the 2003 through 2007 taxation years.

O. The Appellant duly served on the Minister notices of objection to the above reassessments.

P. On December 9, 2014, the Minister confirmed the above reassessments, and accordingly issued a notification on that date.

Assumptions

Q. In determining the Appellant's tax liabilities for the 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 taxation years, the Minister made the following assumptions of fact:

The Appellant and his family

1) at all material times, the Appellant was resident in Canada;

2) the Appellant's spouse is Irene Elizabeth Cooper (also known as Ginger) ("Irene");

3) the Appellant's sons are Arthur Marshall James Cooper (also known as Marshall or Marsh) ("AMJC") and Richard John Cooper ("RJC");

4) AMJC purchased residential property on October 23, 1997 at 5577 Alderley Road, Victoria, British Columbia ("BC");

   a) AMJC became a resident of Canada in November 1997;

5) RJC purchased residential property at 5213 Polson Terrace, Victoria, BC on March 26, 1998;

   a) RJC became a resident of Canada in June 1998;

6) the Appellant's daughter is Shelley Youngleson ("Youngleson");

   a) Youngleson is a resident of the United States ("USA");

7) until the mid-1980s, the Appellant, Irene, AMJC and RJC were residents of South Africa where they had several business operations and property holdings;

8) in the mid-1980s the Appellant, Irene, AMJC and RJC sold all of their assets, and took steps to have a portion of the ownership of the South African companies held by purported trusts, namely the Largo Trust in Liechtenstein, and The MC Trust in South Africa;

9) the Appellant and Irene moved to the USA in 1993;

10) in 1995, the Appellant left the USA so as to not become an American resident subject to USA tax on earnings within any trust structure;

11) in the spring of 1995, the Appellant resided at 10365 Resthaven Drive, Sidney, BC;

12) the Appellant immigrated to Canada on July 26, 1996, taking steps including the following;

a) the Appellant opened a Canadian bank account at the Royal Bank of Canada on June 3, 1996 in Sidney, BC;

b) the Appellant obtained a BC driver's license on July 16, 1996;

c) on July 17, 1996, the Appellant purchased residential property at 301-2545 Oakville Avenue, Sidney, BC with a possession date of July 26, 1996; and

d) on September 23, 1996, the Appellant applied for Permanent Residency through Citizenship and Immigration Canada;

13) by 1996, the Appellant and Irene had completed the sale of their South African holdings;

14) the Appellant has been a resident of Canada since July 26, 1996;

15) in filing his tax returns for the years in issue, the Appellant reported total income and taxable income, paying total income tax of $319, as follows:

Taxation year	**Total income**	**Taxable income**	**Federal and Provincial tax payable**
2003	$1,752	$1,751	Nil
2004	$3,957	$3,742	Nil
2005	$266	($1)	Nil
2006	$12,750	$12,483	Nil
2007	$17,576	$17,576	$319
2008	$6,534	$6,428	Nil
2009	$6,342	$6,341	Nil
2010	$7,016	$7,015	Nil

16) since the Appellant first began filing Canadian tax returns in 1999, he has been refunded provincial and federal credits and supplements totalling $5,431;

17) Irene claimed credits and supplements for the years in which the Appellant did not do so;

18) the Appellant did not disclose in his tax returns that he held foreign property;

19) for all of the years in issue the Appellant failed to report the income he earned from accounts held by Ogral Company Limited;

20) the Appellant's estimated value of his residential property at 3380 Beach Drive, Victoria, BC as of September 2005 is $4,000,000;

21) for 2007 and 2008, the Appellant paid property taxes of $9,887 and $10,344, respectively, in respect of 3380 Beach Drive;

22) the Appellant's lifestyle was not supported by the income he reported for the years in issue;

The offshore trust structure

23) in the mid-1990s, the Appellant and Irene, along with their accountants, took steps to establish an offshore trust structure to protect their wealth and to avoid income tax and foreign reporting obligations;

24) the Appellant and Irene caused to be created Ogral Trust, Liechtenstein ("Ogral Trust") for themselves and The CFT Trust, Jersey (also known as The Capital First Trust or The Cooper Family Trust), for their children AMJC, RJC and Youngleson;

25) Ogral Trust was settled on November 19, 1996 by the Appellant;

a) the assets purportedly settled in Ogral Trust were always held by the Appellant; and

b) the Appellant was the beneficiary of Ogral Trust;

26) The CFT Trust was settled on November 19, 1996;

a) the assets purportedly settled in The CFT Trust were for the benefit of, among others, AMJC and RJC;

27) the Appellant sought advice from his Victoria, BC based accountant, Derrold Norgaard ("Norgaard") of the accounting firm KPMG LLP of Canada ("KPMG") to replace the offshore trust structure because he knew the Canadian five year immigration trust "tax holiday" period would expire on January 1, 2001;

28) at all material times, Norgaard was the Coopers' authorised representative and tax preparer;

The Ogral offshore company structure

29) Barrie Philp ("Philp"), with the assistance of Mark Meredith, both of KPMG, developed the idea of an offshore company structure;

30) KPMG promoted an offshore company structure internally as being for Canadians having high net worth and maturing immigration trusts;

31) on October 15, 2000, Norgaard and Philp introduced an offshore company structure, using the name Ogral Company, to the Appellant, AMJC and RJC (previously defined as the "Coopers"), Youngleson, and Youngleson's spouse Nick;

32) the Appellant knew that as of January 1, 2001 the immigration trust tax exemption period would have ended (as the Appellant had been a resident of Canada for 60 months in that year), and the income of the trusts would then have been taxable for the 2001 and 2002 taxation years;

33) the Coopers caused KPMG to be engaged to put in place an offshore company structure to replace Ogral Trust and The CFT Trust, with the goal of continued protection of their wealth, and the avoidance of income tax and foreign reporting obligations;

34) in October 2001, the Coopers caused KPMG to be engaged to restructure the holdings of Ogral Trust, The CFT Trust and related family trusts;

Ogral Company Limited

35) the Coopers caused to be created Ogral Company Limited, an Isle of Man company (formerly defined as "Ogral"), to replace the offshore trust structure;

36) Ogral was incorporated in the Isle of Man on December 19, 2001 at the request of Norgaard, via the Coopers;

37) Ogral is a guarantee company set up to have non-shareholder and shareholder members, referred to as a hybrid company;

38) the Appellant was the directing mind of Ogral;

39) the offshore company structure in the present case is sometimes referred to as the Ogral Company structure or the offshore company structure (the "Ogral OCS"), as detailed in the attached Schedule "A";

40) the Ogral OCS arrangement included creating an offshore company in the Isle of Man which was either exempt from tax there or subject to tax at the rate of zero percent there, then having Ogral Trust and The CFT Trust donate their corpus to the offshore company, and then winding up the trusts, as follows:

a) the Coopers planned to transfer the corpus of the Appellant's expired immigrant trust namely Ogral Trust, to Ogral, to avoid income tax and foreign reporting obligations and to keep beneficial interest with the Appellant;

b) the Coopers planned to transfer the corpus of the immigrant trust of AMJC and RJC, namely The CFT Trust, to Ogral to avoid income tax and foreign reporting requirements and to keep beneficial interest with AMJC and RJC; and

c) the Coopers planned to retain the control and the benefit of the corpus of the trusts (money) transferred to Ogral (the "Money") and the resulting investment income;

41) the Ogral OCS is comprised of:

a) Memorandum and Articles of Association for Ogral;

b) Shareholders of Record;

c) Non-shareholder Member;

d) Directors of Record;

e) Letter of Wishes (Donor's Wishes);

f) Members Agreement;

g) Option Agreements;

h) Directors' Reports and Unaudited Financial Statements;

i) the General Ledger; and

j) UBS AG and Kleinwort Benson Portfolios;

42) the documents relating to the Ogral OCS purport to represent that the Coopers did not have control of Ogral and purport to represent that the Coopers did not have control over the Accounts and the Money;

43) KPMG generated client fees from Ogral OCS for 2002 through 2008 based on the Coopers' annual tax savings, receiving fees and disbursements of approximately $300,000;

The Money

44) at all material times, the Coopers intended to reacquire and control the Money and the investments held in the name of Ogral;

45) the Money totalled $26,278,067;

46) the Ogral OCS formed a contractual arrangement that established the rights of the Coopers over Ogral and the property it held (i.e., the Money);

47) the Coopers falsely held out that they had donated or gifted the Money and had neither the control nor the benefit of that Money;

48) the Money was transferred to Ogral as follows, and as noted in Schedule "A":

a) on January 1, 2002, AMJC and RJC provided $7,001,751 (i.e., $3,500,876 each) to Ogral;

i) the amount came from the AMJC and RJC II Family Trusts, via The AMJC Family Trust and RJC Family Trust and Skink, via The CFT Trust (the "AMJC Funds", the "RJC Funds" and the "Skink Funds");

b) on January 1, 2003, the Appellant provided $19,276,315 to Ogral;

i) the amount came from Ogral Trust (the "Jackal Funds");

49) the Money was deposited into investment and bank accounts at UBS AG, a bank in Zurich, Switzerland as shown on the attached Schedules "A" and "E";

50) the value of the UBS AG investment and bank accounts at the outset of the Appellant's, AMJC's and RJC's respective provision of the Jackal Funds, the AMJC Funds, the RJC Funds and the Skink Funds to Ogral, is attributed as follows: the Appellant ¾ (i.e., 75%); AMJC ⅛ (i.e., 12.5%); and RJC ⅛ (i.e., 12.5%), as detailed on Schedule "D";

The banks and account managers

51) the Money remained in investment and bank accounts at UBS AG;

52) the Money was briefly transferred to accounts at Kleinwort Benson (Channel Islands) Limited, a bank at the Guernsey Branch, Channel Islands, and then back to accounts at UBS AG (collectively, the "Accounts"), as detailed at Schedule "E";

53) the Appellant had been a client of UBS AG since at least 1980;

54) AMJC and RJC had been clients of UBS AG for many years;

55) Ogral was the named holder of the Accounts;

56) UBS AG and Kleinwort Benson knew the Coopers as the true and actual owners of the funds in the Accounts;

57) none of the Coopers held accounts in their own names at Kleinwort Benson;

58) the Appellant and AMJC personally contacted Kleinwort Benson numerous times;

59) the Appellant personally contacted Kleinwort Benson numerous times respecting Ogral accounts;

60) AMJC and RJC decided and took steps to have their share of the Money in Ogral, still at UBS AG, managed by Barnes Ellis, an investment advisor with Baker Ellis Asset Management LLC, of Portland, Oregon;

a) prior to coming to Canada, AMJC and RJC had lived in Portland, Oregon;

b) Baker Ellis knew AMJC and RJC as the true owners of the funds in the Accounts that Baker Ellis managed; and

c) AMJC personally contacted Baker Ellis numerous times;

The Shareholders of Record

61) corporate service providers in the Isle of Man provided shareholders for Ogral at the time it was formed, as follows, and as shown in Schedule "A":

a) sole shareholder of the Class A shares (the "Class A Shareholder"): Lochside Limited, an Isle of Man company, incorporated July 8, 1997, originally controlled by Singer & Friedlander Trust Company (Isle of Man) Limited (until June 2005);

i) the principal trade or business of Lochside Limited is an investment holding company; and

ii) as of June 2005, the shareholder of record of Lochside Limited is Simcocks Trust Limited, an Isle of Man company;

b) sole shareholder of the Class B shares: Korderry Limited, an Isle of Man company, incorporated February 24, 1999, controlled by Paul Dougherty of law firm Dougherty & Associates, Isle of Man (the "Class B Shareholder")

i) the principal trade or business of Korderry Limited is nominee services;

(the Class A Shareholder and the Class B Shareholder, collectively, the "Shareholders of Record")

62) Lochside Limited and Korderry Limited also acted as shareholders for other KPMG offshore company structures;

63) Paul Dougherty was paid for his services as a nominee director of Ogral and for the services of Korderry Limited as a nominee shareholder of Ogral;

64) the Shareholders of Record:

a) had no interest in Ogral beyond £50 (i.e., 50 pounds sterling);

b) were not allowed to sell their shares;

c) were not able to participate in Ogral's earnings;

d) were not allowed any dividends at Ogral's liquidation beyond £50; and

e) held the shares as nominees for the Coopers;

65) the Shareholders of Record were agents and nominees of the Coopers;

66) the Coopers were the *de facto* and true shareholders of Ogral;

The non-shareholder member

67) in December 2001, KPMG arranged for Belmont Trust Limited, a British Virgin Islands company, to purchase a shelf company, namely Portrush Limited ("Portrush"), for $1,850:

a) Portrush was incorporated on January 8, 2001;

b) Portrush had no power to carry on business in the British Virgin Islands;

c) Portrush's principal trade or business was to be the non-shareholder member of an Isle of Man company;

d) Norgaard asked Del Elgersma of Beacon Law Centre in Sidney, BC ("Elgersma") to act as the director for Portrush;

e) Elgersma acted as the director for Portrush;

f) from December 21, 2001 to December 9, 2002, Portrush's sole shareholder was Youngleson;

g) from December 9, 2002 through all years at issue, Elgersma was Portrush's sole shareholder; and

h) Elgersma held three shares of Portrush;

68) the Ogral OCS required that Ogral's non-shareholder member be a trusted non-Canadian resident;

69) under the Ogral OCS, Portrush was selected to be Ogral's non-shareholder member;

70) the non-shareholder member's (i.e., Portrush's) director nominee (the "NSM") was initially Youngleson;

71) Youngleson resigned as the NSM effective December 9, 2002;

72) Youngleson opted out of the Ogral OCS because of USA tax concerns;

73) Elgersma is a trusted lawyer of the Coopers;

74) Beacon Law Centre maintained a trust account for the Coopers in the client name of Ogral and Portrush;

75) on December 9, 2002, Elgersma was appointed as the NSM after Youngleson's resignation, as shown on Schedule "A";

76) Elgersma agreed to act as the NSM on condition of receiving fees for his NSM and director services, and on condition that the Appellant or Irene would personally indemnify him;

77) Elgersma requested payment from the Appellant for his director services for Ogral;

78) the Appellant indemnified Elgersma as the NSM of Ogral and as the nominee director of Ogral;

79) the NSM purportedly had veto decisions including being able to wind-up and liquidate Ogral;

80) no shareholder could sell or transfer shares without the consent of the NSM;

81) Elgersma considered the Appellant as having the authority and control of Ogral;

82) the Coopers had influence over the NSM and controlled the NSM;

83) the Coopers had influence over Ogral through the NSM and controlled Ogral through the NSM;

The appointed directors

84) as shown on Schedule "A", the appointed directors of record of Ogral (the "Directors of Record") were Anne Couper-Woods, Paul Dougherty and Elgersma;

a) Anne-Couper Woods has acted as director of 12 Simcocks Trust Limited companies including Lochside Limited and director of 34 private companies including Ogral, and since 2007 was former director of 119 other companies including companies involved in other KPMG offshore company structures;

85) no payment from Ogral was ever made to the Coopers when or as determined by the Directors of Record;

86) the Coopers received payments from Ogral only when they requested payments;

87) the Coopers were never refused any request for payment from Ogral and could not be refused;

88) the Coopers accessed the Money in Ogral as and when they pleased;

89) the Directors of Record were agents and nominees for the Coopers;

90) the Coopers were the *de facto* and true directors of Ogral;

91) the central management and control of Ogral was in Canada with the Coopers;

The Isle of Man

92) declarations were made yearly to the Isle of Man Tax Authority that no resident of the Isle of Man had any interest in Ogral;

93) Ogral paid no income tax under the Isle of Man's old or new tax regimes;

a) under the old tax regime, for years ending on or prior to April 5, 2006, a company qualified for tax exemption if it derived all of its income from outside of the Isle of Man and no resident in the Isle of Man was beneficially interested in the company; and

b) under the new "zero-10 regime", effective April 6, 2006, all companies were required to file tax returns but those having members that could not benefit from any distribution made by the corporate taxpayer at any time would pay tax at the rate of 0%;

94) for all of the years in issue under the old tax regime, KPMG provided Ogral's applications for tax exemption to the Isle of Man;

95) for all of the years in issue under the old and new tax regimes, Elgersma provided directors' reports and statements asserting that Ogral was either exempt from Isle of Man income tax for the year, or that no provisions were made for Isle of Man tax because Ogral specifically excluded distributions from being made to any person resident there;

The Money was for the benefit of the Coopers

96) Ogral held the Money as nominee for the benefit of the Coopers;

97) the Coopers each agreed that the Money introduced in Ogral was made in consideration of conditions including the following:

a) the Money and its earnings were held for the benefit of each of them;

b) each of the Coopers could access the Money and its earnings at any time; and

c) the Money and its earnings were to be reacquired by the Coopers;

98) distributions of money from Ogral out of income or investment earnings could only be made to "eligible persons":

a) an "eligible person" could not be a person resident in the Isle of Man for income tax purposes; and

b) the Coopers requested, knew and accepted that they were the "eligible persons";

99) the Money was to be returned to the Coopers at their direction;

100) requests for payments from the Accounts always resulted from the Coopers' requests of the Directors of Record, as follows:

a) the Coopers made written request for payment;

b) the Directors of Record resolved to authorise the request;

c) instructions were given to UBS AG or Kleinwort Benson; and

d) the bank then paid the Coopers directly to their Canadian or offshore bank accounts, or to Beacon Law Centre which then paid the Coopers to their Canadian bank account;

101) if a request for money by the Coopers was refused (which never occurred), the Coopers, through their control of the NSM, could have Ogral wound-up, liquidated, and the Money returned to them;

102) from 2003 to 2010 the Coopers requested and received distributions from the Accounts held in the name of Ogral totalling $5,843,693 as follows:

2003	$1,175,843
2004	$ 968,418
2005	$ 432,308
2006	$ 860,459
2007	$ 419,765
2008	$1,140,637
2009	$ 245,588
2010	$ 600,675
	$5,843,693

103) the Directors of Record, KPMG and the Coopers knew that the Coopers were the true owners of the Money held by Ogral;

Control and further assurances of the Coopers' control over Ogral

104) beyond the assurances provided by KPMG in the Ogral OCS plan, the Appellant arranged for further assurances of control over Ogral and the Money, including implementing the following:

a) the Directors of Record were required to give the Appellant 30 days notice respecting all payments and transfers from the Accounts exceeding US$20,000; and

b) AMJC and the NSM, and RJC and the NSM, entered into contracts on December 22, 2002 whereby AMJC and RJC could remove and replace the NSM at any time, and the Coopers could liquidate Ogral and have the Money returned to them at any time;

105) the Appellant, AMJC and RJC were each highly involved in the creation of Ogral and the prior offshore trust structures, and communicated regularly with the various parties involved in the Ogral OCS, including the Directors of Record, the Shareholders of Record and NSM, KPMG and UBS AG;

106) the Appellant regularly monitored the performance of the Accounts and questioned the fees charged by the banks and Accounts managers, corporate service providers and tax advisors;

The Ogral OCS is a sham

107) the Coopers' motivation in participating in the Ogral OCS was not to gift money but was to participate in a plan, the net result of which was to earn income on a tax-free basis;

108) the Coopers' involvement in the Ogral OCS was made with the intention and the expectation that they would retain control of Ogral and the Money, earn income in Ogral, retain and reacquire the initial investment and acquire the earned income, and have access to the funds without having to pay tax;

109) the parties to the OCS presented the transactions as being different from what they knew them to be:

a) Donor's Wishes purport the Coopers as having given up control of the Money to the Directors of Record of Ogral;

b) however, the Memorandum and Articles of Association for Ogral and the Members Agreement prevent the Directors of Record from having discretion over Ogral and the Money, and ensure that control remains with the Coopers through the NSM; and

c) Option Agreement(s) between AMJC and the NSM, and RJC and the NSM ensure the Coopers' control of the NSM;

110) the Coopers, KPMG, the Shareholders of Record, the NSM, the Directors of Record, UBS AG and Kleinwort Benson each knew that, at all material times:

a) the Coopers were the actual owners of the Accounts and the Money purportedly held by Ogral;

b) the Coopers were the beneficial owners of the Accounts;

c) the Coopers intended to, and did, control the Money; and

d) the Coopers reacquired some of the Money (i.e., $5,843,693) from Ogral;

111) the Coopers, KPMG, the NSM and the Directors of Record also each knew that:

a) the Coopers had not gifted the Money to Ogral;

b) the Coopers intended to, and did, control Ogral;

c) the Coopers were the *de facto* and true shareholders and directors of Ogral;

d) the Coopers could cause Ogral to be liquidated at any time; and

e) the Coopers intended to reacquire the Money introduced into Ogral as well as any resulting earnings from that Money;

112) KPMG and the Coopers knew that the Coopers' overall objective was to avoid paying income tax on income they earned in respect of the Money;

113) UBS AG and Kleinwort Benson knew that the Coopers were the actual owners of the Accounts held by Ogral;

114) the series of the transactions involving Ogral from the date of its incorporation were to give the appearance that the Coopers were not the beneficiaries of the Money;

115) Ogral was created at the direction and control of the Coopers to deceive the Canadian tax authorities by creating the appearance that gifts of the Money were made to Ogral and that the Coopers had given up control of that Money;

116) the Ogral OCS is a sham and was intended to deceive the Minister so that the Appellant, AMJC and RJC could receive taxable funds on a tax-free basis;

117) the steps taken and the documents created in setting up the Ogral OCS were all in furtherance of the sham;

118) the real purpose of the Ogral OCS was to earn income that could be acquired by the Coopers without tax and foreign reporting consequences;

Unreported income

119) at all material times, the Accounts accumulated income through earnings on the investments held therein;

120) Ogral held itself out as an investment company;

121) the Coopers selected people to manage the investments made in Ogral's name;

122) Ogral's portfolio included a continuous mix of liquidity, bonds, equities and alternative investments in different currencies;

123) frequent transactions were made in the Accounts, including the extensive buying and selling of securities;

124) the securities were held for short periods of time;

125) expenses were incurred for, among others, investment counsel respecting the earning of investment income in the Accounts as shown on the attached Schedule "C";

126) expenses in excess of those allowed by the Minister were not incurred or were not incurred for the purpose of gaining or producing income in respect of the Accounts;

127) disallowed expenses include amounts not incurred for the purpose of gaining or producing income, including payments made to KPMG and to corporate service providers, Simcocks Trust Limited and Beacon Law Centre (Elgersma) to assist the Appellant in the sham by providing nominee shareholder and director services, as detailed in Schedule "C";

128) the Accounts earned interest and other investment income as detailed in Schedule "B";

129) income earned on the Accounts is on income account;

130) none of the income earned on the Accounts has been reported;

131) for the 2003 through 2010 taxation years, the Appellant did not report income he earned on the Accounts as follows, totalling $3,542,394, and as detailed in Schedule "D":

Taxation Year	**Unreported interest and other investment income (line 121)**	**Carrying charges (line 221)**
2003		($3,380,964)
2004	$2,462,955	
2005	$3,288,113	
2006		($1,623,370)
2007	$2,135,410	
2008		($768,206)
2009		($382,211)
2010	$1,810,667	

Failure to file foreign reporting information returns

132) for each year in issue, the Appellant failed to file foreign reporting forms (T1135s) in respect of his foreign property held in foreign bank accounts exceeding $100,000;

133) the Appellant intentionally did not report property (i.e., his allocation of the Money and resulting investment earnings) in the Accounts having a total cost for each year in issue, as follows, as detailed in Schedule "E":

Taxation year	**Unreported offshore bank accounts**
2003	$14,128,310
2004	$15,002,188
2005	$15,558,853
2006	$16,669,109
2007	$16,956,578
2008	$17,885,151
2009	$15,306,858
2010	$15,495,291

134) although the investments in the Accounts did not result in positive earnings for 2003, 2006, 2008 and 2009, the Appellant intentionally did not report the Accounts amounts for those years;

135) the Appellant knew of his reporting obligations in respect of the T1135 information returns for the years in issue and failed to file these returns; and

136) the Appellant was grossly negligent in failing to file T1135 information returns for the years in issue.

Gross negligence penalties

R. In addition to the facts assumed by the Minister as enumerated in paragraph Q, the Minister relied on the following additional facts in determining that the Appellant was liable for penalties under subsection 163(2) of the Act on the unreported foreign income (loss) amounts detailed at paragraph N above:

1. the Appellant, AMJC and RJC (defined earlier as the Coopers) had influence over Ogral and controlled Ogral;

2. to avoid detection by Canadian tax authorities and thus taxation under the Act, the Coopers knowingly and purposefully caused Ogral to be founded, and they utilized Ogral to avoid being identified as its beneficiaries;

3. the Coopers are all knowledgeable and experienced business persons;

4. the Coopers knew that they had caused Ogral to be formed for their benefit, and that they should have reported the Accounts' funds and the income earned in those Accounts;

5. for the years in issue, the Appellant's reported income was not commensurate with his lifestyle;

6. the Appellant knew that care had to be taken to correctly report income;

7. the Appellant provided information to KPMG indicating that he did not hold foreign property having a cost of more than $100,000 and was aware of the consequences of failing to disclose;

8. for all of the years in issue, Norgaard prepared the tax returns for each of the Coopers;

9. the Appellant certified his tax returns as correct and complete;

10. the adjustments made to the Appellant's income for each of the years in issue is material relative to the income that he reported in those years, as detailed in paragraphs K and Q above;

11. the Appellant made or participated in, assented to or acquiesced in the making of, false statements or omissions in his 2003 through 2010 income tax returns by failing to report the foreign income (loss) amounts; and

12. the Appellant made those false statements or omissions knowingly or under circumstances amounting to gross negligence.

Misrepresentation

S. In addition to the facts assumed by the Minister as enumerated in paragraph Q and the facts relied on in paragraph R, the Minister relied on the following additional facts in determining that the Appellant made misrepresentations attributable to neglect or carelessness in filing his income tax returns for the 2003 through 2007 taxation years:

1. the Appellant made misrepresentations in his 2003, 2004, 2005, 2006 and 2007 income tax returns by not reporting all of his income for those taxation years, and specifically, by not reporting the foreign income (loss) amounts totalling $2,882,144 he received from Ogral in those years (the specific yearly amounts are detailed in paragraph N);

2. further, the Appellant made misrepresentations in his 2003, 2004, 2005, 2006 and 2007 income tax returns by certifying that he did not hold foreign property in those years having a cost of more than $100,000; and

3. the misrepresentations were attributable to the Appellant's neglect or carelessness.

II ISSUES TO BE DECIDED

T. The issues are:

1. whether the Ogral OCS was a sham;

2. whether the Appellant was required to include in his income the foreign income (loss) amounts totalling $3,542,394 for the years in issue, and whether those amounts were on account of income;

3. whether the Appellant is liable for penalties under subsections 162(7), (10) and (10.1) of the Act for the 2003 through 2008 taxation years, and under subsections 162(7) and (10) for the 2009 and 2010 taxation years in

respect of the failure to file T1135 foreign reporting forms as and when required under subsection 233.3(3);

4. whether the Appellant knowingly, or under circumstances amounting to gross negligence, failed to report the foreign income (loss) amounts; and

5. whether the Appellant made misrepresentations attributable to neglect, carelessness or wilful default in his 2003 through 2007 income tax returns by failing to report the foreign income amounts (for 2004, 2005 and 2007) and by not reporting that he held foreign property in those years having a cost of more than $100,000.

III STATUTORY PROVISIONS RELIED ON

U. He relies on sections 9, 20, 95, 160, 233.3 and 250, subsections 18(1), 91(1), 104(1), 152(4), 152(8), 162(7), 162(10), 162(10.1), 163(2), 230(1) and 248(1), and paragraphs 12(1)(k), 18(1)(a), 20(1)(bb) and 111(1)(a) of the Act.

IV GROUNDS RELIED ON AND RELIEF SOUGHT

Unreported income

V. He submits that the Ogral OCS and the series of the transactions comprising it are a sham. Ogral was created at the direction and control of the Appellant and his sons to facilitate the sham by creating the appearance that they had purportedly gifted the Money to Ogral and purportedly given up control of that Money. The Appellant's and his sons' motivation in participating in the Ogral OCS was not to gift money but was to participate in a plan, the net result of which was to earn income on a tax-free basis. The documents relating to the Ogral OCS were a sham, in so far as they purport to represent that the Coopers did not have control of Ogral and purport to represent that the Coopers did not have control over the Accounts and the Money.

W. He further submits that the parties to the Ogral OCS wilfully presented its transactions as being different from what they knew them to be. All parties knew that the Appellant and his sons controlled Ogral and intended to reacquire the funds introduced to the Accounts held in Ogral's name. The Ogral OCS was intended to deceive the Minister so that the Appellant, AMJC and RJC could receive taxable funds on a tax-free basis and to avoid foreign reporting requirements, while enriching all of the parties participating in the sham.

X. He submits that the Coopers and the corporate service providers entered into transactions that would have the Minister believe the Coopers gave up control over their money to Ogral, while at the same time the parties to the Ogral OCS entered into other transactions to prevent that from happening:

1. Donor's Wishes purport the Coopers as having given up control of the Money to the Directors of Record of Ogral;

2. however, the Memorandum and Articles of Association for Ogral and the Members Agreement prevent the Directors of Record from having discretion over Ogral and the Money, and ensure that control remains with the Coopers through the NSM; and

3. Option Agreement(s) between AMJC and the NSM, and RJC and the NSM ensure the Coopers' control of the NSM;

Y. As a resident of Canada, the Appellant was required to report his foreign income (loss) amounts from property pursuant to section 9 of the Act. Those amounts are on account of income and not capital. They were the result of frequent trading, and Ogral's portfolio investments were not intended to be held long-term. The Minister properly included in the Appellant's income for the 2003 through 2010 taxation years the amounts detailed in Schedule "D".

Z. In the alternative, if Ogral is not holding the bank and investment accounts for the Appellant and his sons, which is not admitted but is specifically denied, he submits that the Appellant and his sons were at all material times the *de facto* shareholders of Ogral. As such, the income earned in the Accounts attributed to the Appellant as detailed in Schedule "D" is taxable to him as foreign accrual property income (from Ogral which is a controlled foreign affiliate), with reference to section 9, paragraph 12(1)(k), subsection 91(1) and section 95 of the Act.

Foreign reporting form penalties

AA. The Appellant failed to file information returns, namely T1135 forms, as and when required by subsection 233.3(3) of the Act for each of the 2003 through 2010 taxation years. Consequently, the Appellant is liable for penalties for each of those years under subsection 162(7) of the Act.

Gross negligence penalties

BB. He submits that the Appellant, knowingly or under circumstances amounting to gross negligence, failed to file T1135 information returns for the 2003 through 2010 taxation years as and when required by section 233.3 of the Act. As such, the Appellant is liable for penalties under subsection 162(10) of the Act for each of the 2003 through 2010 taxation years. Further, since the number of months during which each of the information returns for the 2003 through 2008 taxation years was required to be filed but was not filed exceeded 24 months, the Appellant is also liable for penalties under subsection 162(10.1) for each of those taxation years.

CC. He submits that the Minister properly assessed penalties under subsection 163(2) of the Act. The Appellant, knowingly or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of false statements or omissions in filing his 2003 through 2010 income tax returns by failing to report the foreign income (loss) amounts. As a result, the tax that would have been payable assessed on the information provided in the returns filed in respect of those years was less than the tax that would be payable computed according to subparagraph 163(2)(a)(i) of the Act.

DD. In the alternative, if the Appellant was not grossly negligent in failing to report the foreign income amounts for his 2004, 2005 and 2007 taxation years, in filing his returns for those years he made misrepresentations that are attributable to neglect, carelessness or wilful default within the meaning of paragraph 152(4) of the Act, and consequently, the Minister was entitled to reassess unreported income for those years beyond the normal reassessment period.

EE. Further, in the alternative, if the Appellant was not grossly negligent in failing to file T1135 information returns for the 2003 through 2007 taxation years as and when required by section 233.3 of the Act to report his holdings of foreign property in those years having a cost of more than $100,000, by not filing T1135 information returns for those years he made misrepresentations that are attributable to neglect, carelessness or wilful default within the meaning of paragraph 152(4)(a) of the Act, and consequently, the Minister was entitled to assess foreign reporting penalties for those years beyond the normal reassessment period.

FF. He requests that the appeals be dismissed, with costs.

DATED at the City of Vancouver, the Province of British Columbia, this 9th day of July, 2015.

William F. Pentney, Q.C.
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Solicitor for the Respondent

Per: _____
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Marshall Cooper v. Her Majest
Tax Court of Canada Appeal No. 2
AMENDED SCHEDULE "B": Interest and

Interest and Other Investment Income	2002-12-31	2003-12-31	2004-12-31	2005-12-3
Net investment income (loss) from Dec 21 2011 D Norgaard schedule	$ (745,169)	$ (4,624,450)	$ 3,245,381	$ 4,359,5
Audit Adjustments: (See Schedule "C")				
Expenses not laid out to earn income, not available under s.20(1)(bb):				
Investment fees	$ 32,418	$116,497	$38,559	$23,
Portrush expenses				
Directors fees				
Other professional fees				
Statutory fees				1,(
Investment income	174,007			
Total Audit Adjustments	$ 206,425	$116,492	$ 38,559	$ 24,6
Interest and Other Investment Income	$ (538,744)	$ (4,507,953)	$ 3,283,940	$ 4,384,1

y the Queen
015-1069(IT)G
Other Investment Income

1	2006-12-31	2007-12-31	2008-12-31	2009-12-31	2010-12-31	Total
45	$ (2,214,266)	$ 2,790,619	$ (1,069,569)	$ (562,753)	$ 2,307,292	$3,486,630
558						$211,833
	1,963	900	874	962	1,514	6,213
	5,251	5,169	12,207	7,945	7,317	37,889
	42,413	49,839	31,586	43,662	97,590	265,089
48	146	687	628	570	510	3,589
06	$ 49,773	$ 56,595	$ 45,295	$ 53,139	$ 106,931	$697,820
51	$ (2,164,493)	$ 2,847,214	$ (1,024,274)	$ (509,614)	$ 2,414,223	$ 4,184,450