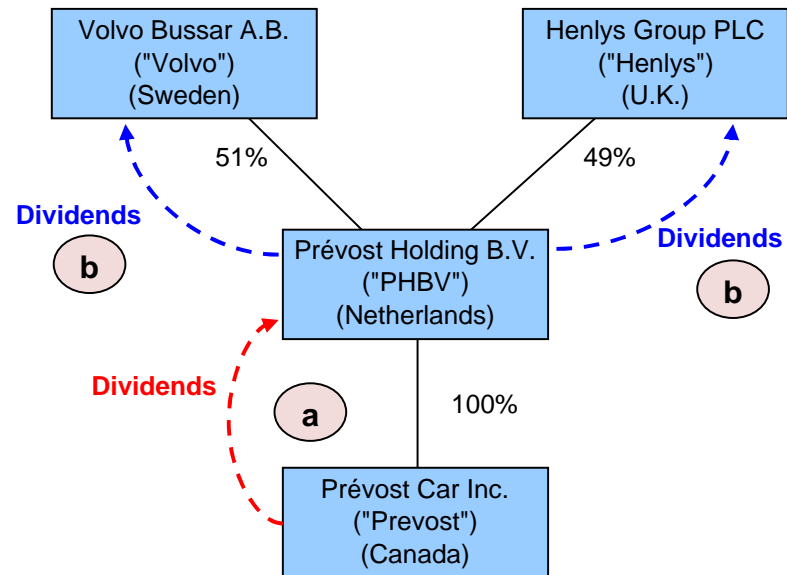


Prévost Car, Inc. v. The Queen 2008 T.C.C. 231

"Beneficial Owner" Under Canada-Netherlands Tax Treaty

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The issue in the case was whether PHBV was the beneficial owner of dividends paid by Prévost in 1996, 1997, 1998, 1999 and 2001. The term "beneficial owner" is found in Article 10, paragraph 2 of the Canada-Netherlands Tax Treaty ("Tax Treaty"). Prévost is a resident Canadian corporation who declared and paid dividends to its shareholder Prévost Holding B.V. ("PHBV"), a corporation resident in the Netherlands. The Minister of National Revenue ("Minister") issued assessments under Part XIII of the Income Tax Act ("Act") against Prévost, notices which are dated July 13, 2000, August 29, 2001 and April 15, 2004, in respect of the aforementioned dividends. The Minister assessed on the basis that the beneficial owners of the dividends were the corporate shareholders of PHBV, a resident of the United Kingdom and a resident of Sweden, and not PHBV itself. When Prévost paid the dividends it withheld tax in accordance with Article 10 of the Tax Treaty, at a rate of 5%.



The term "beneficial owner" is not unique to the Tax Treaty; It is found in 85 of Canada's 86 tax treaties. Only Canada's treaty with Australia uses the term "beneficially entitled." The terms "beneficial owner" and "*bénéficiaire effectif*", together with the Dutch term "*uiteindelijk gerechtigde*," appear in the Tax Treaty and must be given meaning. The court held that PHBV was the beneficial owner of the dividends from Prévost. In the court's view the "beneficial owner" of dividends is:

[T]he person who receives the dividends for his or her own use and enjoyment and assumes the risk and control of the dividend he or she received. The person who is beneficial owner of the dividend is the person who enjoys and assumes all the attributes of ownership. In short the dividend is for the owner's own benefit and this person is not accountable to anyone for how he or she deals with the dividend income.

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