

BETWEEN:

STC STEEL TECHNOLOGIES CANADA, LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 10, 2026, at Toronto, Ontario

Before: The Honourable Justice Jenna Clark

Appearances:

Counsel for the Appellant: Raymond G. Adlington

Counsel for the Respondent: Ryan R. Hall

JUDGMENT

The appeal of the reassessment for the taxation year ending December 31, 2021 under the *Income Tax Act* is dismissed.

The parties shall have 30 days from the date of this Judgment to reach an agreement on costs and to so advise the Court, failing which the Respondent shall have a further 20 days to serve and file written submissions on costs and the Appellant shall have a further 20 days to serve and file a written response. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the applicable time limits, costs shall be awarded to the Respondent in accordance with the Tariff.

Signed this 12th day of August 2026.

“Jenna Clark”

Clark J.

BETWEEN:

STC STEEL TECHNOLOGIES CANADA, LTD.,

Appellant,

and

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REASONS FOR JUDGMENT

Clark J.

I. INTRODUCTION

[1] When are a subsidiary's non-capital losses converted into a functional currency upon wind-up? This appeal asks whether the non-capital losses are converted in the hands of the subsidiary or in the hands of the parent.

[2] The practical effect of this question is determination of the relevant date for currency conversion from Canadian dollars (CAD) to United States dollars (USD). The Respondent maintains that non-capital losses incurred by a subsidiary corporation that wound-up to a parent corporation ought to be converted into USD in the hands of the subsidiary, in accordance with section 261 of the *Income Tax Act* (Act). The Appellant states that non-capital losses are deemed to have become those of the parent corporation in accordance with subsection 88(1.1) of the Act and are therefore converted into USD in the hands of the parent.

II. BACKGROUND

[3] The evidentiary record was formed entirely by a joint Statement of Agreed Facts.

[4] The Appellant, STC Steel Technologies Canada Ltd., elected functional currency of USD in its tax return for its taxation year ending March 31, 2011.¹

[5] The Appellant was the sole shareholder of Kasle Steel of Canada Ltd. (Kasle Steel) which did not elect a functional currency and therefore reported in CAD.²

[6] Kasle LLC was a limited liability company not resident in Canada but related to the Appellant. On December 2, 2020 it transferred all of its shares of Kasle Steel to the Appellant, such that the Appellant held more than 90% of shares of Kasle Steel on that date.³

[7] Kasle Steel commenced winding-up, and dissolved, on December 2, 2020. Its last taxation year also ended on that date. Its preceding taxation year ended on December 31, 2019.⁴

[8] Kasle Steel incurred non-capital losses for its taxation years ending March 31, 2009 in the amount of \$680,396 CAD, for the year ending March 31, 2010 in the amount of \$1,949,761, for the year ending December 31, 2010 in the amount of \$25,084 CAD, and for the year ending December 31, 2011 in the amount of \$37,958 CAD (Losses).⁵

[9] The parties agree that the following table shows in what taxation years of the Appellant the Kasle Steel loss years ended:⁶

Kasle Steel Loss Years end dates	Appellant's taxation years in which Kasle Steel Loss Years ended
2009 Loss Year: March 31, 2009	April 1, 2008 – March 31, 2009
2010 Loss Year: March 31, 2010	April 1, 2009 – March 31, 2010

¹ Statement of Agreed Facts, para 3.

² Statement of Agreed Facts, paras 6, 7, and 8.

³ Statement of Agreed Facts, paras 9, 10, and 11.

⁴ Statement of Agreed Facts, paras 12, 13, and 14.

⁵ Statement of Agreed Facts, para 15.

⁶ Statement of Agreed Facts, para 16.

Short 2010 Loss Year: December 31, 2010	April 1, 2010 – March 31, 2011
2011 Loss Year: December 31, 2011	April 1, 2011 – December 31, 2011

[10] The parties agree that ultimately, Kasle Steel's Losses became those of the Appellant pursuant to subsection 88(1.1) of the *Act*. The parties also agree that as the Appellant elected USD as its functional currency, the Losses had to be converted from CAD to USD. The sole dispute is the applicable date(s), and hence the applicable exchange rate (spot rate) for that currency conversion.

[11] The Appellant's position is that subsection 261(16) of the *Act* does not apply to these facts. Instead, the Appellant argues that we are to first look to subsection 88(1.1) when concluding that the Losses are deemed to be the Appellant's losses in the year in which they were incurred.

[12] The parties agree that the Appellant had misapplied the applicable spot rates for each period, and the Appellant's corrected position is as follows:⁷

	Kassel Steel's Losses in CAD	Applicable Exchange Rate	Losses in USD
2009 Losses	\$680,396	1.0158	\$669,813
2010 Losses	\$1,949,761	1.0158	\$1,919,434
Short year 2010 Losses	\$25,084	.9946	\$25,220
2011 Losses	\$37,958	1.017	\$37,324

[13] The Appellant reported its non-capital loss carry forward balance as \$2,631,186 USD on Schedule 4 to its 2020 T2 Return of Income. The parties share the view that if the Appellant's position in this appeal is correct, the total capital loss carry forward balance available to the Appellant was \$2,651,791 USD.

[14] The Respondent maintains that subsections 261(16), 261(5), and 261(7) of the *Act* apply such that the exchange rate to be applied to the Losses was the rate applicable on December 31, 2019. The total Losses in CAD was \$2,693,199. The 2019 spot rate was 1.29887, and therefore the amount of the Losses in USD was correctly reassessed in the amount of \$2,073,494.⁸

⁷ Statement of Agreed Facts, para 23 with corrections provided at hearing of the appeal.

⁸ Statement of Agreed Facts, para 23.

III. LAW

A. *Wind-Up Rules*

[15] Subsection 88(1) of the *Act* provides for tax-free wind-ups of a subsidiary corporation into a parent corporation. It applies when the Canadian corporation owned no less than 90% of issued shares of each class, any shares not owned by the parent were owned by persons with whom the parent dealt with at arm's length, and there was a wind up.

[16] Subsection 88(1) of the *Act* sets out rules for the distribution of property from the subsidiary to the parent, including a deemed disposition of the subsidiary's property immediately before wind-up for proceeds equal to the cost of the property immediately before the winding-up.

[17] The chapeau of subsection 88(1.1) of the *Act* sets out the same requirements as those set out in subsection 88(1). Both provisions apply to the Kasle Steel wind-up.

[18] Subsection 88(1.1) of the *Act* deems non-capital losses of a subsidiary to be those of the parent, when certain conditions are met:

88(1.1) Where a Canadian corporation (in this subsection and subsection (1.11) referred to as the “subsidiary”) has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection and subsection (1.11) referred to as the “parent”) and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded	88(1.1) Lorsqu'une société canadienne (appelée « filiale » au présent paragraphe et au paragraphe (1.11)) a été liquidée, qu'au moins 90 % des actions émises de chaque catégorie du capital-actions de la filiale appartenaient, immédiatement avant la liquidation, à une autre société canadienne (appelée « société mère » au présent paragraphe et au paragraphe (1.11)) et que toutes les actions de la filiale n'appartenant pas à la société mère immédiatement avant la liquidation appartenaient à ce moment à une ou plusieurs personnes avec lesquelles la société mère n'avait aucun de dépendance, pour le calcul du revenu imposable de la société mère en vertu de la présente partie et de l'impôt payable par elle en vertu de la partie IV pour toute année d'imposition commençant après le début de la liquidation, la fraction d'une perte autre qu'une perte en capital, d'une perte agricole restreinte, d'une perte agricole
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as its loss from carrying on a particular business (in this subsection referred to as the “subsidiary’s loss business”) and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as the “subsidiary’s loss year”), and the portion of the restricted interest and financing expense of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the “subsidiary’s expense year”) that may reasonably be regarded as an expense or loss incurred by the subsidiary in the course of carrying on a particular business (in this subsection referred to as the “subsidiary’s expense business”) and any other portion of the restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, to the extent that it (a) was not deducted in computing the taxable income of the subsidiary for any taxation year of the subsidiary, and (b) would have been deductible in computing the taxable income of the subsidiary for any taxation year beginning after the commencement of the winding-up, on the assumption that it had such a taxation year and that it had sufficient income for that year, shall, for the purposes of this subsection, paragraphs 111(1)(a), (a.1), (c), (d) and (e), subsection 111(3) and Part IV, (c) in the case of such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on the subsidiary’s loss business, be deemed, for the taxation year of the parent in which the subsidiary’s loss year ended, to be a non-capital loss, restricted farm loss, farm loss or limited partnership loss, respectively,	ou d’une perte comme commanditaire subie par la filiale qu’il est raisonnable de considérer comme résultant de l’exploitation d’une entreprise donnée (appelée « entreprise déficitaire de la filiale » au présent paragraphe), de même que toute autre fraction d’une perte autre qu’une perte en capital ou d’une perte comme commanditaire subie par la filiale qu’il est raisonnable de considérer comme dérivant d’une autre source et toute autre fraction d’une perte autre qu’une perte en capital subie par la filiale qu’il est raisonnable de considérer comme relative à une demande faite en vertu de l’article 110.5 pour une année d’imposition donnée de la filiale (appelée « année de la perte subie par la filiale » au présent paragraphe), et la fraction d’une dépense d’intérêts et de financement restreinte de la filiale pour une année d’imposition de celle-ci (appelée « année de dépenses de la filiale » au présent paragraphe), qu’il est raisonnable de considérer comme une dépense engagée ou la perte qu’elle a subie dans l’exploitation d’une entreprise donnée (appelée « entreprise de dépenses de la filiale » au présent paragraphe) et toute autre fraction d’une dépense d’intérêts et de financement restreinte de la filiale qu’il est raisonnable de considérer comme engagée relativement à une autre source, dans la mesure où la fraction : a) n’a pas été déduite dans le calcul du revenu imposable de la filiale pour une année d’imposition de celle-ci; b) aurait été déductible dans le calcul du revenu imposable de la filiale pour une année d’imposition qui commence après le début de la liquidation, à supposer qu’elle ait eu une telle année d’imposition et un montant suffisant de revenu pour cette année, est, pour l’application du présent paragraphe, des alinéas 111(1)a), a.1), c), d) et e), du paragraphe 111(3) et de la partie IV : c) dans le cas de la fraction d’une perte autre qu’une perte en capital, d’une perte agricole
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of the parent from carrying on the subsidiary's loss business, that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,	restreinte, d'une perte agricole ou d'une perte comme commanditaire subie par la filiale qu'il est raisonnable de considérer comme la perte qu'elle a subie dans l'exploitation de son entreprise déficitaire, réputée être, pour l'année d'imposition de la société mère au cours de laquelle s'est terminée l'année de la perte subie par la filiale, une perte autre qu'une perte en capital, une perte agricole restreinte, une perte agricole ou une perte comme commanditaire, respectivement, subie par la société mère et résultant de l'exploitation de l'entreprise déficitaire de la filiale, et qui n'était pas déductible par la société mère dans le calcul de son revenu imposable pour toute année d'imposition qui a commencé avant le début de la liquidation;
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[19] If the conditions of subsection 88(1.1) of the *Act* are met, as they are in this case, the non-capital loss of the subsidiary is deemed to be a non-capital loss of the parent in the taxation year of the parent in which the subsidiary's loss year ended.

B. Functional Currency Reporting Regime

[20] Section 261 of the *Act*, first introduced in 2007,⁹ sets out rules that allow a taxpayer to determine their income, for Canadian tax purposes, in an elected functional currency.¹⁰

[21] The general rule, set out in subsection 261(2), is that amounts determined under the *Act* are in Canadian currency.

[22] An exception to this rule is set out in subsection 261(5). If that subsection applies, the taxpayer's Canadian tax results for the particular year are to be determined using an elected functional currency. That subsection sets out the manner in which amounts are to be converted from Canadian dollars to the elected functional currency, using a relevant spot rate.

⁹ *Legislative Proposals and Explanatory Notes to Implement Remaining Budget 2007 Tax Measures*, Minister of Finance, October 2007.

¹⁰ Technical Notes to 261 October 2014; Canada, *Budget Plan 2006, Focusing on Priorities*, Annex 3, Tax Measures: Supplementary Information and Notices of Ways and Means Motions (May 2, 2006).

[23] Subsection 261(5) applies either when a taxpayer meets the conditions set out in subsection 261(3) or when subsection 261(5) is deemed to apply. Subsection 261(16) contains such a deeming provision.

[24] If a taxpayer's taxation year is subject to subsection 261(5), that year becomes a "functional currency year" as defined in subsection 261(1).

[25] Subsection 261(7) of the *Act* applies to particular functional currency years of a taxpayer. It applies to amounts that are to be converted from CAD to the taxpayer's elected functional currency using the relevant spot rate for the last day of the taxpayer's last Canadian currency year.

IV. ANALYSIS

A. The Parties' Positions

[26] The Appellant's position is that subsection 261(16) of the *Act* does not apply in this situation and therefore the relevant statutory provisions apply in the following order:

- i. Subsection 88(1.1) of the *Act* applied after the December 2, 2020 wind-up, such that the Losses are those of the Appellant, deemed to have been incurred by the Appellant in the year the subsidiary incurred the Losses;
- ii. as the Appellant's elected functional currency is USD, paragraph 261(7)(a)(i) of the *Act* applies to the Losses incurred before the Appellant's election date, and the relevant spot rate for Losses incurred after the Appellant's election date in 2009 and early 2010 was the spot rate at the end of the Appellant's last Canadian currency year; and
- iii. the Losses deemed to have been incurred by the Appellant after its election date are to be converted by reference to subsection 261(5) of the *Act* which applies such that the Losses are to be converted at the spot rate for the applicable year.

[27] The Respondent's position is that subsection 261(16) applies to the Kasle Steel wind-up. That subsection provides that if a wind-up described in subsection 88(1) commences at any time and the parent and subsidiary have different reporting currencies at the commencement time, certain rules apply for the purposes of determining the subsidiary's "Canadian tax results", as defined in subsection 261(1).

[28] The Respondent argues that subsection 261(16)(a) deems subsection 261(5) to apply to Kasle Steel in respect of its functional currency year, the year ending December 2, 2020. Paragraph 261(5)(a) requires the subsidiary’s “Canadian tax results” to be determined using its elected functional currency. Paragraph 261(7)(a) sets the exchange rate as that of the last day of the subsidiary’s last Canadian currency year, December 31, 2019.

B. Statutory Interpretation

[29] My analysis must begin with a determination as to whether the words of the provision are precise and unequivocal. If that were the case, the ordinary meaning of the words would play a dominant role in the interpretative process. Where the words can support more than one reasonable meaning, the ordinary meaning plays a lesser role.¹¹ While in some situations legislative intent may be considered in tandem with a textual analysis, it is appropriate to begin an interpretation of the *Act* with careful consideration of the words chosen by Parliament.¹² In so doing, I consider not the isolated meaning of the words but rather their meaning in their entire context.¹³

[30] The modern principle for statutory interpretation has been codified in section 12 of the *Interpretation Act*, which requires that every provision shall be given fair, large, and liberal construction. The principle directs me to interpret Parliament’s statutory provisions by considering the text, context, purpose, and legislative intent.

C. Subsection 261(16) applies to the Kasle Steel wind-up

[31] Wind-ups are addressed in subsection 261(16):

261(16) If a winding-up described in subsection 88(1) commences at any time (referred to in this subsection as the “commencement time”) and the parent and the subsidiary referred to in that subsection would, in the absence of this subsection, have different tax reporting currencies at the	216(16) Dans le cas où une liquidation visée au paragraphe 88(1) commence à un moment donné (appelé « début de la liquidation » au présent paragraphe) et où la société mère et la filiale visées à ce paragraphe auraient, en l’absence du présent paragraphe, des monnaies de déclaration différentes à ce
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¹¹ *Canada Trustco Mortgage Co v Canada*, 2005 SCC 54 at para 10. See also section 12 of the *Interpretation Act*, RSC 1985 c. I-21, as amended.

¹² *R v Wilson*, 2025 SCC 32 at paras 35 and 36; *Hunt v HMK*, 2026 FCA 88 at paras 12 and 13; *Canada v Loblaw Financial Holdings Inc*, 2021 SCC 51 at para 41; *Kruivitsky v The King*, 2026 TCC 141 at paras 19 and 20.

¹³ *Canada Trustco Mortgage Co*, at para 10.

commencement time, the following rules apply for the purposes of determining the subsidiary's Canadian tax results for its taxation years that end after the commencement time: (a) where the subsidiary's tax reporting currency is Canadian currency, (i) notwithstanding subsection (3), subsection (5) is deemed to apply to the subsidiary in respect of its taxation year that includes the commencement time and each of its subsequent taxation years, if any, (ii) the subsidiary is deemed to have as its elected functional currency the parent's tax reporting currency, and (iii) if the subsidiary's taxation year that includes the commencement time would, in the absence of this subsection, be a reversionary year of the subsidiary, this section is to be read with any modifications that the circumstances require;	moment, les règles ci-après s'appliquent lorsqu'il s'agit de déterminer les résultats fiscaux canadiens de la filiale pour ses années d'imposition se terminant après ce moment : a) dans le cas où la monnaie de déclaration de la filiale est le dollar canadien : (i) malgré le paragraphe (3), le paragraphe (5) est réputé s'appliquer à la filiale pour son année d'imposition qui comprend le début de la liquidation et pour chacune de ses années d'imposition postérieures, (ii) la monnaie fonctionnelle choisie de la filiale est réputée correspondre à la monnaie de déclaration de la société mère, (iii) dans le cas où l'année d'imposition de la filiale qui comprend le début de la liquidation serait une année de rétablissement en l'absence du présent paragraphe, le présent article s'applique avec les adaptations nécessaires;
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[32] The parties agree that the wind-up was one described in subsection 88(1), that the wind-up commenced on December 2, 2020 and that the Appellant and Kasle Steel had different tax reporting currencies on December 2, 2020.

[33] The Appellant's position is that despite these agreed facts, subsection 261(16) does not apply. It argues that Kasle Steel did not have a taxation year that ended *after* the commencement time. Kasle Steel's final taxation year ended on December 2, 2020, the same day as the commencement time.

[34] The Appellant contends that subsection 261(16) of the *Act* is designed to ensure that in instances where there is a delay between the commencement of a wind-up and its completion, "Canadian tax results" will be reported in the functional currency of the parent. It argues that the provision does not apply when the wind-up commences and ends on the same day.

[35] There is no deemed year end for a vertical wind-up under subsection 88(1) of the *Act*. A subsidiary's taxation year ends when the wind-up is completed, and the corporation ceases to exist. It is the completion, not the commencement, of the wind-up that triggers the year end.

[36] “Commencement time” is defined in the chapeau of subsection 261(16) as when a winding-up commences at any time. Parliament’s choice of the phrase “commencement time” rather than “commencement day” indicates that sequencing is relevant to the interpretation of the provision. The commencement time must occur before the year end, even if both occur on the same day.

[37] The provision goes on to state in subparagraph 261(16)(a)(i):

notwithstanding subsection (3), subsection (5) is deemed to apply to the subsidiary in respect of its taxation year that includes the commencement time and each of its subsequent taxation years, if any.

[38] The modern approach to statutory interpretation is consistent with consideration of the totality of a provision when interpreting the chapeau. In this case, subparagraph 261(16)(a)(i) supports the interpretation that subsection (5) is deemed to apply to the subsidiary in respect of its taxation year that *includes* the commencement time.

[39] The taxation year that included the commencement time is undeniably the taxation year ending December 2, 2020.

[40] The Appellant’s position is that subsection 261(16) is “solely applicable to non-capital losses incurred in taxation years following the commencement time”.¹⁴ This position is not supported by the text of the provision. As discussed below, it is also not supported by a contextual analysis or consideration of the legislative purpose served by the provision.

D. The Losses are not relevant to determining the Appellant’s Wind-Up Rules

[41] The Appellant contends that, in any event, subsection 261(16) of the Act does not apply because its stated purpose is to determine the subsidiary’s “Canadian tax results” for taxation years that end after the commencement time. In this case, Kasle Steel had nil income for its taxation year ending December 31, 2020.

[42] The Respondent argues that the Losses are part of Kasle Steel’s “Canadian tax results” because they fall within paragraph (d) of the definition and are relevant in determining the amounts described under paragraphs (a) to (c). I disagree with both parties on this point.

¹⁴ Appellant’s slide submissions, page 8.

[43] This definition of “Canadian tax results” set out in subsection 261(1):

Canadian tax results of a taxpayer for a taxation year means (a) the amount of the income, taxable income or taxable income earned in Canada of the taxpayer for the taxation year; (b) the amount (other than an amount payable on behalf of another person under subsection 153(1) or section 215) of tax or other amount payable under this Act by the taxpayer in respect of the taxation year; (c) the amount (other than an amount refundable on behalf of another person in respect of amounts payable on behalf of that person under subsection 153(1) or section 215) of tax or other amount refundable under this Act to the taxpayer in respect of the taxation year; and (d) any amount that is relevant in determining the amounts described in respect of the taxpayer under paragraphs (a) to (c). (résultats fiscaux canadiens)	résultats fiscaux canadiens En ce qui concerne un contribuable pour une année d'imposition : a) son revenu, revenu imposable ou revenu imposable gagné au Canada pour l'année; b) son impôt, ou toute autre somme, à payer pour l'année en vertu de la présente loi, à l'exception d'une somme à payer au nom d'une autre personne en application du paragraphe 153(1) ou de l'article 215; c) l'impôt, ou toute autre somme, qui lui est remboursable pour l'année en vertu de la présente loi, à l'exception d'une somme remboursable au nom d'une autre personne au titre de sommes à payer au nom de celle-ci en application du paragraphe 153(1) ou de l'article 215; d) toute somme qui est prise en compte dans le calcul des sommes visées aux alinéas a) à c). (Canadian tax results)
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[44] Kasle Steel's Losses were not income in the taxation year ending December 2, 2020. They were not an amount of tax payable in that year, an amount of tax refundable in that year, nor an amount relevant in determining those amounts. No Losses were deducted in that year.

[45] The Appellant argues that as Kasle Steel's Losses were not engaged in the determination of its “Canadian tax results” for the year ending December 2, 2020, subsection 261(16) of the *Act* does not apply because its purpose is to determine the subsidiary's “Canadian tax results”.

[46] I cannot agree. Subsection 261(16) applies to require Kasle Steel to *determine* its “Canadian tax results”. The conclusion that its “Canadian tax results” are nil is the result of that determination.

[47] Having met the requirements set out in the chapeau of section 261(16) of the *Act*, Kasle Steel was required to engage in the determination of its “Canadian tax results”. Subparagraph 261(16)(a)(i) states that subsection 261(5) is deemed to apply to the subsidiary.

[48] I accept the Appellant’s submission that the Losses themselves were not a part of Kasle Steel’s “Canadian tax results” as defined by subsection 261(1). Even so, it does not follow that the Losses are insulated from the functional currency regime, once it is determined that subsection 261(16) applies. If the taxpayer’s “Canadian tax results” are nil because it had no income and there was no tax payable or refundable, that is still a “Canadian tax result”. That result is nil.

[49] It does not matter that the result of the determination is nil; what matters is that the legislation brings the subsidiary into the functional currency regime in the course of determining the “Canadian tax results”. Once subsection 261(16) applies in order to require Kasle Steel to determine its “Canadian tax results”, subsection (5) is deemed to apply and operates according to its own terms.

[50] Engagement of subsection 261(5) means that Kasle Steel has a “functional currency year” which triggers application of subsection (7).

E. Subsection 261(16) triggers subsection 261(5) and
subparagraph 261(7)(a)(i)

[51] Subsection 261(16) of the *Act* applied to require Kasle Steel to engage in the process of determining its “Canadian tax results” for the taxation year ending December 2, 2020. Subparagraph 261(16)(a)(i) provides that subsection 261(5) is therefore deemed to apply to the taxation year that includes the commencement time.

[52] That taxation year is Kasle Steel’s taxation year ending December 2, 2020. As subsection (5) applies to that year, it is a “functional currency year” as defined in subsection 261(1):

functional currency year of a taxpayer means a taxation year in respect of which subsection (5) applies to the taxpayer. (année de déclaration en monnaie fonctionnelle)	année de déclaration en monnaie fonctionnelle Toute année d’imposition d’un contribuable relativement à laquelle le paragraphe (5) s’applique au contribuable. (functional currency year)
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[53] Subsection 261(7) of the *Act* in turn applies to a taxpayer for a particular “functional currency year”. The fact that the Losses were not part of Kasle Steel’s “Canadian tax results” has no bearing on the application of subsection 261(7). In fact, the *Explanatory Notes* indicate that the definition “Canadian tax results” is

relevant only to subsections (2), (4), (5) and (9).¹⁵ Subsection 261(7) operates independently and is triggered when subsection 261(5) applies to a year.

[54] Subsection 261(7) provides that existing loss pools must be converted using the relevant spot rate for the last day of the taxpayer's last Canadian currency year:

(7) In applying this Act to a taxpayer for a particular functional currency year of the taxpayer, the following amounts are to be converted from Canadian currency to the taxpayer's elected functional currency using the relevant spot rate for the last day of the taxpayer's last Canadian currency year: (a) each particular amount that (i) is, or is relevant to the determination of, an amount that may be deducted under subsection 37(1) or 66(4), variable F or F.1 in the definition foreign accrual property income in subsection 95(1), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3), in the particular functional currency year, and (ii) was determined for a Canadian currency year of the taxpayer;	7) Pour l'application de la présente loi à un contribuable pour son année de déclaration en monnaie fonctionnelle (appelée « année donnée » au présent paragraphe), les sommes ci-après, exprimées en dollars canadiens, sont converties en leur équivalence dans la monnaie fonctionnelle choisie du contribuable selon le taux de change au comptant affiché le dernier jour de la dernière année de déclaration en monnaie canadienne du contribuable : a) chaque somme qui, à la fois : (i) représente une somme qui est déductible en application des paragraphes 37(1) ou 66(4), des éléments F ou F.1 de la formule figurant à la définition de revenu étranger accumulé, tiré de biens au paragraphe 95(1), des articles 110.1 ou 111 ou des paragraphes 126(2), 127(5), 129(1), 181.1(4) ou 190.1(3) pour l'année donnée, ou est prise en compte dans le calcul d'une telle somme, (ii) a été déterminée pour une année de déclaration en monnaie canadienne du contribuable;
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[55] The Losses are amounts that may be deducted under section 111 of the *Act* in the particular functional currency year (December 2, 2020).¹⁶ The provision requires conversion of those amounts from Canadian currency to the taxpayer's elected functional currency using the relevant spot rate for the last day of the taxpayer's last Canadian currency year.

[56] The Appellant points to the express reference to section 111 within subparagraph 261(7)(a)(i) to support its interpretation that Parliament specifically

¹⁵ Canada, Department of Finance, *Explanatory Notes Relating to the Income Tax Act, Tax Excise Act, 2001 and the Excise Tax Act* (Ottawa: Department of Finance, February 2009) at 80.

¹⁶ The Respondent's position is that the amount is an amount that may be deducted pursuant to section 111, rather than an amount relevant to the determination of an amount that may be deducted.

contemplated conversion of non-capital loss carry forwards as part of the functional currency regime. While I agree, mere reference does not answer the question of *whose* functional currency year triggers operation of this subsection. In this case, having found that subsection 261(16) applies to Kasle Steel's taxation year ending December 2, 2020, subsection (5) is deemed to apply to Kasle Steel in that year, with the result that subparagraph 261(7)(a)(i) applies to Losses held by Kasle Steel in that year.

[57] The Respondent points to the words “may be deducted” to support its position, arguing that Parliament is considered to have intentionally chosen its words¹⁷ to indicate amounts that are capable of being deducted. The Losses were not in fact deducted in the year, however they remained available to Kasle Steel.

[58] Parliament selected the permissive word “may” to indicate that the provision applies to taxpayers who had a right to claim, or not claim, the deduction in the year.¹⁸ Selection of that word means that the provision includes amounts that were not deducted in the year, but were held as a non-capital loss pool.

[59] The French language version of the provision uses the term “représente une somme qui est deductible” or, “represents an amount that is deductible”. While the French text does not include the permissive “may”, it does use the same tense. The provision applies not to amounts that have been deducted, but to amounts that are capable of being deducted in the year. To the extent that the difference in phrases may indicate the English text is more permissive, I rely on the contextual and purposive analysis to find that the shared meaning applies to amounts that were capable of being deducted.¹⁹

F. Purpose of the Functional Currency Regime and Subsection 261(16)

[60] The current version of subsection 261 of the *Act* was introduced in 2009. The *Explanatory Note* indicates that the purpose of functional currency tax reporting is to ease compliance and promote representative financial reporting.²⁰

¹⁷ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada, 2008) at page 216.

¹⁸ *Interpretation Act*, RSC, c. I-21, s. 11.

¹⁹ *R v Daoust*, 2004 SCC 6.

²⁰ *Supra*, note 15.

[61] The provision aligns the reporting currency of a wound-up corporation with that of the parent and facilitates transfer of tax attributes to the amalgamated corporation. The *Explanatory Note* states:

More specifically, subsection 261(16) applies where a winding-up described in subsection 88(1) commences and the parent and the subsidiary referred to in subsection 88(1) would otherwise have different reporting currencies when the winding-up commences (the “commencement time”). In such situations, one of two sets of rules apply for the purposes of determining the subsidiary’s Canadian tax results for its taxation years that end after the commencement time.

The first set of rules, set out in paragraph 261(16)(a), applies where the subsidiary’s tax reporting currency is Canadian currency. Those rules ensure that the subsidiary determines its Canadian tax results, starting with its taxation year that includes the commencement time, using the parent’s elected functional currency. As the subsidiary’s taxation year (referred to here as the pre-wind-up year) that immediately precedes that taxation year will be the subsidiary’s last Canadian currency year, subsections 261(7) to (10) will operate to convert its relevant Canadian currency amounts and its pre-transition debts into the parent’s (and now the subsidiary’s) elected functional currency using the relevant spot rate for the last day of the pre-wind up year.

[62] The explanation does not support the Appellant’s position. The *Explanatory Note* does not describe the provision as limited to instances where the subsidiary reports positive Canadian tax results in years after the wind-up commences. It states that it applies once a winding-up has commenced, and the parent and subsidiary have different reporting currencies.

[63] The *Explanatory Note* also indicates that the purpose of the provision is to convert the relevant Canadian currency amounts and any pre-transition debts into the elected functional currency. Canadian currency amounts is not a defined term. I understand it to have a general application to amounts held by the subsidiary in Canadian currency. This includes non-capital loss pools. Conversion of the subsidiary’s tax attributes in the hands of the subsidiary serves the purpose expressed in the *Explanatory Note*.

[64] The Appellant observes that the *Explanatory Note* does not expressly mention loss carry forwards. However, it does expressly note that subsections (7)-(10) convert relevant CAD amounts into the elected functional currency. Subsection (7) does expressly refer to amounts deductible under section 111.

[65] The clear conclusion is that the *Explanatory Note* indicates that subsection 261(16) was meant to convert non-capital loss amounts in the hands of the subsidiary. It specifically references the application of subsection 261(7) to Canadian currency amounts.

G. Conversion in the hands of the subsidiary is consistent with the Act as a whole

[66] The Appellant argues that the presumption against tautology applies such that if subsection 261(16) were to apply even in an instance where the subsidiary did not have positive “Canadian tax results” after the commencement of the winding-up, paragraph 88(1.1)(c) would be given no effect.

[67] The Appellant’s position effectively treats paragraph 88(1.1)(c) as displacing subsection 261(16) entirely. I cannot agree and do not view the provisions as competing. There is no question that paragraph 88(1.1)(c) applies and Kasle Steel’s Losses are to become those of the Appellant upon wind-up. Subsection 261(16) deems Kasle Steel to share its parent’s function currency for the taxation year that included the commencement time of the wind-up. Kasle Steel’s Losses were converted into the functional currency (USD) and became those of the Appellant upon wind-up.

[68] Upon wind-up into a parent that has an elected functional currency, sections 261(16) and 261(5) apply such that the subsidiary passes the threshold into the functional currency regime for its last taxation year. The subsidiary is required to determine its “Canadian tax results” for the taxation year that includes the commencement time. Non-capital losses are held by the subsidiary as tax attributes, as it passes through that threshold. Subsection 261(7) of the *Act* applies to convert the unused non-capital losses into the functional currency at the time that the subsidiary passes the threshold.

[69] The Federal Court of Appeal in *Quebecor Inc.* recently discussed the purpose and application of subsection 88(1):

When these three conditions are met, the winding-up is “tax free” for both the subsidiary and the parent. Metaphorically speaking, the subsidiary disappears and the parent takes its place. This happens because property distributed to the parent is deemed to have been disposed of by the subsidiary for proceeds of disposition equal to the cost amount to the subsidiary of that property, and this cost has become the cost to the parent of the property: paragraphs 88(1)(a) and (c). Accordingly, there is neither gain nor loss for the subsidiary. Moreover, the shares in the

subsidiary that the parent owned are generally deemed to have been disposed of at cost, with the consequence that there is neither gain nor loss for the parent: paragraph 88(1)(b).²¹

[70] Converting losses in the hands of the subsidiary serves this stated purpose. The wind-up remains tax free for both the subsidiary and the parent, and conversion in the hands of the subsidiary allows the parent to seamlessly take the subsidiary's place. Kasle Steel disappears and leaves the Appellant holding the Losses in USD. The provisions operate in harmony.

[71] Subsection 88(1.1) deems the subsidiary's property to have been disposed of for proceeds of disposition equal to the cost amount to the subsidiary of that property. This deemed disposition takes place in the moment before wind-up and is consistent with understanding subsection 261(16) to require conversion into the elected functional currency in the moment before wind-up.

[72] Paragraph 150(1)(a) of the *Act* requires all corporations resident in Canada to file a return of income containing prescribed information. Corporations report their non-capital loss balances yearly on Schedule 4.²² The scheme of the *Act* requires taxpayers to disclose their non-capital loss balances. This contextual analysis supports the conclusion that a subsidiary is required to report its non-capital losses in its functional currency, in its "functional currency year".

V. CONCLUSION

[73] The Minister correctly reassessed the Appellant's taxation year ending December 31, 2021 to determine that the Appellant was entitled to a non-capital loss deduction of \$2,073,494 USD. The appeal is therefore dismissed.

[74] The parties shall have 30 days from the date of this Judgment to reach an agreement on costs and to so advise the Court, failing which the Respondent shall have a further 20 days to serve and file written submissions on costs and the Appellant shall have a further 20 days to serve and file a written response. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the applicable time limits, costs shall be awarded to the Respondent in accordance with the Tariff.

²¹ *Canada v Quebecor Inc.*, 2025 FCA 207 at para 9.

²² Statement of Agreed Facts, para 30.

Signed this 12th day of August 2026.

“Jenna Clark”

Clark J.

CITATION: 2026 TCC 149

COURT FILE NO.: 2024-1086(IT)G

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