

Publisher's Note

2019 — Release 1

Previous release was 2018-1

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Schwartz

GAAR Interpreted: The General Anti-Avoidance Rule

Release 2019-1

Highlights

Chapter 5 — Judicial Interpretation Case Law

- The following case has been added:

3295036 Canada Inc. c. L'Agence du revenu du Quebec, in this case, a corporate taxpayer acquired shares from its parent in two separate transactions, both of which occurred in October 1996. Rollover elections were made in respect of the transfers pursuant to subsection 85(1) of the Act for federal and Ontario tax purposes. However, the taxpayer acquired the shares at full cost for Quebec tax purposes as no rollover elections were filed in Quebec.

- The following cases have been decided and added to this chapter:

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Deans Knight Income Corporation v. The Queen examining deductibility of non-capital losses, scientific research and experimental development expenditure and investment tax credits, and acquisition of control under subsection 256(8) and paragraph 251(5)(b).

Bank of Montreal v. The Queen exploring tower structure misuse or abuse of subsection 112(3.1) of the *Income Tax Act*.

Loblaw Financial Holdings Inc. v. The Queen use of the GAAR to re-characterize business income of a foreign bank as FAPI and subsection 95(1) definition of investment business.

- The following cases have had further developments:

Birchcliff Energy Ltd. v. The Queen the taxpayer appealed from the judgment of Justice Jorré of the Tax Court to the Federal Court of Appeal. The taxpayer conceded that there was a tax benefit and avoidance transaction so that the sole issue was whether there was a misuse of their provision of the Act or an abuse of the Act read as a whole.

Développements Iberville Ltée v. Québec Revenue Agency the appellants appeal from a judgment rendered on June 2, 2016, by the Quebec Court, in which the Honourable Daniel Bourgeois found that the appellants' use of the "Quebec Year-end Shuffle ("Q-YES")" triggered the GAAR in the *Taxation Act* (Quebec) ("TA").

The Federal Court of Appeal unanimously affirmed the Tax Court of Canada's decision in *Quinco Financial Inc. v. The Queen* where the commencement date for calculating GAAR assessment interest is the taxpayer's "balance-due date", not the date of the assessment.

MP Western Properties Inc. v. The Queen the taxpayer appealed the decision to the Federal Court of Appeal. The Federal Court of Appeal decided that none of the arguments warrants its intervention. The request for correspondence between the CRA and the Department of Finance on loss trading over a period in excess of a decade, led the Tax Court to conclude that the request was a fishing expedition that would be difficult to satisfy. The Federal Court of Appeal held that the Tax Court did not make a reviewable error in concluding this disclosure request was a fishing expedition.

594710 British Columbia Ltd. v. The Queen, the Crown appealed the decision of the Tax Court to the Federal Court of Appeal, and the appeal was allowed examining the following: does the GAAR apply to Partnerco?; standard of review in a GAAR case; and GAAR and section 160.

1245989 Alberta Ltd. v. The Queen the taxpayer appealed from the decision of the Tax Court in Canada where the court reiterated the test for a standard of review in a GAAR case.

In the following two cases the Federal Court of Appeal dismissed the appeal:

- *Pomerleau (Pierre) c. The Queen*, and
- *2763478 Canada Inc. v. The Queen*.

Chapter 7 — Cases Pending

One new case has been added:

Value Village Canada Inc. v. The Queen examining the misuse and abuse of subsection 89(1) and section 212.1.