JANUARY 30, 2020

# Canadian Tax Laws: A Review of 2019 and a Look Ahead to 2020

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Each year at this time we look back at some of the more significant income tax developments in Canada affecting domestic and international business over the past year and look ahead to possible Canadian tax developments in the coming year.

## Review of Canadian Tax Developments in 2019

### Tax Legislation

With the October federal election looming, 2019 was a relatively quiet year for tax legislation. The highest-profile move was the proposal in Budget 2019 to limit the preferential personal income tax treatment available to employees who are issued stock options, though the final details for this legislation have been deferred at least until the 2020 budget. On the international front, the coming into force of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) may have a significant impact on international tax planning.

#### Taxation of Employee Stock Options

When an employee stock option is exercised, the difference between the strike price and the fair market value of the share is included in the employee's income (In-the-Money Amount) unless the issuer is a Canadian controlled private corporation (CCPC), in which case the In-the-Money Amount inclusion is deferred until the underlying share is sold. Under certain conditions, the *Income Tax Act* (ITA) affords an offsetting deduction equal to one-half of the In-the-Money Amount, so that a qualifying stock option benefit is effectively taxed at the same rate as a capital gain. Draft legislation released on June 17, 2019, proposed to limit the availability of this deduction on stock options for employees of "large, long-established, mature firms." It was also proposed that the new limitations would not apply to stock options issued by CCPCs and other corporations that met "prescribed conditions," which are intended to apply to startups, emerging, and scale-up companies.

The draft legislation limited the deduction for options having the same "vesting year," regardless of the strike price of the option, to the extent that the fair market value of the securities under the options exceeds $200,000 at the time the options are granted. A vesting year in respect of an option agreement is either (i) the calendar year in which the employee is first able to exercise his or her option as specified in the option agreement or (ii) if the option agreement is silent on that point, the first calendar year in which the option can reasonably be expected to be exercised. The draft legislation was expected to come into force on January 1, 2020, and apply to option agreements entered into after 2019. The draft legislation was ambiguous in several significant respects (including when a corporation would be considered a startup, an emerging or a scale-up company and when it would be considered large, long-established and mature).

On December 19, 2019, the federal government announced that the new regime would not come into force on January 1, 2020, but that it intends to move forward with changes to limit the benefit of the employee stock option deduction for high-income individuals employed at large, long-established, mature firms. Details on how the government intends to move forward with the measures will be announced in the 2020 federal budget. The government has indicated that the new effective date, to be announced in the budget, will provide taxpayers with time to adjust to the new rules. Assuming that the government proceeds with the legislation, this means we should be looking at a mid-year effective date at the earliest.

**Coming into Force of the Multilateral Instrument**

On December 1, 2019, the OECD-sponsored MLI officially entered into force in Canada. The MLI requires participating countries to agree to minimum standards with respect to anti-treaty-shopping and dispute resolution measures; it also permits the adoption of a number of optional tax treaty provisions.

Canada has listed 84 of its 93 tax treaties as "Covered Tax Agreements" (CTAs), each of which will be affected by the MLI if the relevant CTA partner ratifies the MLI under its domestic law. Notably, Canada's ratification of the MLI will not affect its treaty with the United States, which has not signed the MLI. The list of CTAs also does not include Germany and Switzerland; although both have signed the MLI, Canada has announced that it is commencing bilateral treaty renegotiation with these two countries.

With respect to the minimum standards relating to entitlement to treaty benefits, Canada has opted for the principal purpose test (PPT) as opposed to a limitation of benefits type of provision such as that included in the United States' income tax treaties. The PPT is a general anti-abuse rule that considers whether one of the principal purposes of an arrangement or transaction is to obtain treaty benefits in a way that is not in accordance with the object and purpose of the relevant treaty provisions. The federal government has announced its intention, where appropriate, to negotiate the inclusion of detailed limitations on benefits provisions in its treaties on a bilateral basis, either in addition to or in replacement of the PPT. Until further clarification is provided, the scope and effect of the PPT remain uncertain.

With respect to minimum standards relating to dispute resolution, Canada has chosen to opt into mandatory binding arbitration provisions that are similar to the provisions included in its tax treaty with the United States. Under these rules, mandatory binding arbitration applies when a case remains unresolved through the normal competent authority procedures for more than three years. After this period has lapsed, unresolved disputes are subject to a "baseball-style" final offer arbitration mechanism in which each country presents its final position, and the arbitration panel must choose between them.

In addition to these two minimum standards, Canada has also adopted the following four optional MLI provisions (for which it had previously reserved its position):

- a 365-day holding period ensuring that lower treaty-based rates of withholding tax on dividends will be made available only for companies holding shares for over 365 days;
- a 365-day lookback testing period for the purposes of determining whether capital gains on a sale of shares (or similar rights in an entity) that do not derive a certain percentage of their value from real or immovable property are exempted from tax;
- a provision on methods of resolving dual-resident entity cases; and
- a provision intended to allow treaty partners to move from a tax-exemption system to a foreign tax credit system as their method of providing relief from double taxation.

Now that the MLI has been ratified, Canada cannot add further reservations limiting the application of the MLI to its CTAs. However, it may remove reservations to render applicable other optional provisions of the MLI. Thus, additional MLI provisions may enter into force and affect certain CTAs in the future.

The OECD has published a "toolkit" on its website allowing users to, among other things, consult a database to determine whether or not a particular bilateral tax treaty is a CTA, which MLI provisions are applicable to that treaty and when the changes come into force. In Canada's case, the MLI will apply to CTAs, when the relevant CTA partner has ratified the MLI under its domestic law, (a) on January 1, 2020, for withholding taxes, and (b) for other taxes (including capital gains taxes) for tax years beginning on or after June 1, 2020 (which for calendar year taxpayers would be January 1, 2021).

**Post-Mortem Estate Planning and Pipelines**

In October 2018, the Canadian government introduced draft legislation to amend the cross-border anti-surplus-stripping rule in section 212.1 of the ITA that would have inappropriately and retroactively frustrated post-mortem "pipeline" planning implemented for Canadian estates with non-resident beneficiaries. Pipeline planning is used to address double-taxation issues that can arise when shares of a

Canadian corporation form part of an estate. In the absence of planning to address this issue, any accrued gain on the shares could be taxed twice: once on death as a capital gain and again as a dividend when the corporation distributes its assets to the beneficiaries. Very generally, the amendments introduced a new look-through rule that would have subjected the non-resident beneficiaries of the Canadian estate to withholding tax on a deemed dividend triggered in the course of the implementation of the pipeline, thereby subverting the purpose of the pipeline to avoid double-tax. In December 2019, Finance Canada issued a comfort letter that confirmed that this inappropriate outcome was unintended and that the new look-through rule should not apply in the context of a post-mortem pipeline when the estate in question is a Canadian-resident "graduated rate estate" (GRE) of a Canadian-resident individual.

The December 2019 comfort letter was a welcome development that alleviated some concern about the new look-through rule, as post-mortem pipeline planning should generally remain available for Canadian estates with non-resident beneficiaries. However, care should be taken to ensure that the estate in question qualifies as a GRE at the time the pipeline is implemented. In addition, it appears that the new look-through rule may continue to frustrate certain other planning, including post-mortem pipelines implemented for *inter vivos* trusts and testamentary spousal trusts with non-resident beneficiaries.

**Foreign Affiliate Dumping**

The foreign affiliate dumping (FAD) rules are a complex set of provisions in the ITA that apply when a corporation resident in Canada (CRIC) that is controlled by a non-resident corporation makes or is deemed to make an investment in a foreign affiliate. When applicable, the FAD rules deem a dividend to be paid by the CRIC to the controlling non-resident equal to the amount of the investment, with certain exceptions.

Budget 2019 proposed to fundamentally change the basic design of the FAD rules by extending the application of the rules beyond the multinational corporate group environment to CRICs that are controlled by a non-resident individual, a non-resident trust or a non-arm's-length group of such persons or non-resident corporations, applicable to transactions and events that occur after March 18, 2019. The proposals include rules that would be used to determine whether persons are non-arm's length and whether one person (or group of persons) controls another person.

In the trust and estate planning context, ownership attribution rules in proposed paragraphs 212.3(26)(a) and (c) of the ITA, as initially drafted, would have resulted in the FAD rules applying by virtue of a discretionary trust having non-resident beneficiaries in inappropriate circumstances. For instance, a downstream investment in a non-resident corporation by a family-controlled Canadian private company could have triggered the proposed rules where voting control of the company rested in a discretionary trust and the founder's non-resident children or grandchildren were among the beneficiaries.

Seemingly in response to heavy criticism from the tax community, Finance Canada has since narrowed the scope of proposed paragraph 212.3(26)(c) by subjecting it to an anti-avoidance purpose test. The proposed ownership attribution rules should not result in the application of the FAD rules to a discretionary trust in the above example, provided that the discretionary trust is resident in Canada, and it cannot reasonably be considered that one of the main reasons for the trustees' discretionary power is to avoid the application of specific provisions of the ITA, including the FAD rules.

Nonetheless, taxpayers should be mindful of these amendments and the potential application of the FAD rules when a Canadian corporation with foreign subsidiaries is controlled by a Canadian-resident trust or estate with non-resident beneficiaries.

**Mutual Fund Trust Amendments**

Prior to Budget 2019, mutual fund trusts generally deducted the amount of any income or capital gains that the trusts paid to unitholders that redeemed their units. A redeeming unitholder's capital gain on the redemption of units is generally equal to the proceeds received minus the amount of capital gains or income allocated by the trust. Allocating income and gains to redeeming unitholders therefore avoided potential double taxation when redeeming unitholders were taxed on the gains realized on the disposition of their units, and the mutual fund trust or the remaining unitholders were taxed on the same economic gains when the trust disposed of the underlying investments.

Budget 2019 introduced restrictions on the amount of capital gains that could be allocated to redeeming unitholders and prohibited mutual fund trusts from allocating any ordinary income to redeeming unitholders. The Department of Finance stated these amendments were required to deal with certain mutual fund trusts that, in its view, were allocating excessive capital gains to redeeming unitholders or were allocating income to unitholders that were indifferent to the allocation because they held the units on income account.

The final rules implementing Budget 2019 changes were broadly drafted, and mutual fund trusts have undertaken various restructurings or policy changes to respond to the rules. One Canadian ETF manager, Horizon ETFs, consolidated many of its ETFs under a single mutual fund corporation with corresponding classes of tracking shares that tracked each ETF. The purpose of this structure was to allow the mutual fund corporation to deduct losses realized from one class of investment against the income and gains realized on another class of investments and reduce the need for future distributions to investors, including redeeming shareholders. Other mutual fund trust managers are apparently considering similar restructurings.

The allocation to redeemer rules are the latest in a series of changes pertaining to the taxation of mutual fund trusts and corporations going back to 2006 in both the income and excise tax areas. Given the size of the mutual fund industry in Canada, some in the asset management industry expect that the Department of Finance will continue to focus on these rules in its forthcoming budgets.

## Tax Cases

### ***Cameco*** **Decision Prohibits CRA from Compelling Oral Interviews During an Audit**

Although the CRA's audit powers are, generally speaking, quite broad, the recent Federal Court of Appeal (FCA) decision in *Minister of National Revenue v Cameco Corporation* upheld the Federal Court – Trial Division's decision prohibiting a long-standing CRA practice of requiring interviews by taxpayers and their employees in the course of an audit. The FCA held that the CRA's powers under paragraph 231.1(1)(a) of the ITA to "inspect, audit or examine" a taxpayer's books and records did not permit the CRA to compel oral interviews of a taxpayer or its employees.

In particular, Rennie J.A., writing for the majority of the Court, applied the modern approach to statutory interpretation in examining the text, context and purpose of paragraph 231.1(1)(a) and rejected the Minister's argument that the phrase "inspect, audit or examine" gives CRA the authority to compel oral interviews.

*The Decision*

Rennie J.A. held that the Minister's powers to "inspect, audit or examine" is focused squarely on the ability to access information in the taxpayer's books and records. Rennie J.A. proceeded to consider the context of paragraph 231.1(1)(a) and held that when Parliament intends to compel a person to provide oral answers to questions in response to a government inquiry, it does so expressly. Such express statutory language is not present in paragraph 231.1(1)(a).

In determining the purpose of paragraph 231.1(1)(a), Rennie J.A. acknowledged the Minister's argument that her ability to ask questions of a taxpayer to verify information is important to Canada's self-reporting system of taxation. However, he held that the Minister's inability to compel taxpayers to answer oral questions at the audit stage does not render her audit powers "toothless." For example, the Minister may make inferences regarding questions that remain unanswered, and the taxpayer has the onus of demolishing such inferences in any appeal to the Tax Court of Canada.

Finally, Rennie J.A. considered the legislative history of paragraph 231.1(1)(a) and found that it removed any doubt with respect to Parliament's intention regarding the purpose of the provision. The predecessor provision to paragraph 231.1(1)(a) expressly provided the Minister with the power to compel oral examinations at the audit stage, but this language was deleted as part of the amendments enacting paragraph 231.1(1)(a). Rennie J.A. also took into account the Department of Finance's Technical Notes accompanying these amendments, which stated that such amendments sought "to provide clear limits on Revenue Canada's enforcement powers."

*CRA's Response to the Decision*

In response to the Cameco decision, the CRA issued a press release wherein it stated:

> The decision of the FCA [in *Cameco*] does not diminish the responsibilities of owners, managers and other persons on the premises of a business to cooperate and answer questions during the course of an audit. Refusal to participate in oral interviews, and to provide the assistance required during the course of an audit indicates a lack of openness and transparency, and potentially a higher risk of non-compliance.
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> ...
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> The CRA will continue to seek interviews where necessary and expects that the vast majority of taxpayers will continue to comply. Where taxpayers decline interviews in circumstances similar to the Cameco case, the CRA will use alternative means to carry out its obligations in verifying a taxpayer's level of compliance, which may increase tax uncertainty and compliance burden for the taxpayer. This may include the use of assumptions about the nature of a taxpayer's business activities and tax planning to form the basis of an assessment of taxes owing.

*Key Takeaways for Taxpayers*

Notwithstanding the *Cameco* decision, taxpayers can expect that requests for oral examinations will remain a routine aspect of the CRA's audit procedure. Although the CRA's warnings about declining such examination will loom large in the minds of many taxpayers, the *Cameco* decision provides taxpayers who are hesitant to undergo an oral examination by the CRA with a strong legal basis on which to resist such an examination.

## ***MacDonald* Decision Creates Uncertainty for Canadian Taxpayers Holding Derivatives for Speculative Purposes**

A taxpayer's intention in holding a particular property has long been considered a relevant factor in, if not determinative of, the characterization of gains or losses realized in respect of such property as capital gains or ordinary income. In *MacDonald v The Queen*,[1] however, the FCA held that the taxpayer's intention was not relevant to the determination of whether a derivative contract entered into by the taxpayer was a hedge on capital account, or, alternatively, a speculative investment on income account.

*The Decision*

In *MacDonald*, the taxpayer held a significant investment in Bank of Nova Scotia (BNS) shares which he held on capital account. He had no intention of selling the shares, but, anticipating a decline in the share price, he entered into a cash-settled forward contract relating to a large number of BNS shares. The BNS share price increased; the taxpayer settled the contract over time; and he suffered a loss. At issue was whether the loss was on capital or income account. For Canadian income tax purposes, the treatment of any gain or loss from a hedging instrument is determined by the character of the asset being hedged. Therefore, if the forward contract was characterized as a hedge, the taxpayer's loss in respect of the forward contract would be on capital account.

The Tax Court of Canada held that the taxpayer's loss was on income account because he did not have an intention to hedge and instead entered into the forward contract for speculative purposes. The FCA overturned this decision and held that the taxpayer did not need to have an intention to hedge in order to enter into a hedge for tax purposes. Rather, the FCA held that it is sufficient that the taxpayer owns assets exposed to market fluctuation risk when the alleged hedge is entered into and that it has the effect of neutralizing or mitigating that risk.

In reaching this conclusion, the FCA relied heavily on the Supreme Court of Canada's decision in *Placer Dome Canada Ltd. v Ontario (Minister of Finance)* and the Tax Court of Canada's decision in *George Weston Ltd. v The Queen*. Interestingly, in each of these cases, it was fairly clear that the taxpayer had an intention to hedge. In *George Weston*, the Tax Court judge made an express finding of fact that the taxpayer intended to hedge. In *Placer Dome*, the transactions at issue were carried out under the taxpayer's hedging program. Given these very different facts, it is interesting that the FCA relied so heavily on these two decisions in holding that a taxpayer's intention is irrelevant to whether a particular derivative is a hedge for tax purposes, since in each case the taxpayer intended to hedge, and the Court found that the derivative in question was a hedge.

The FCA's decision in *MacDonald* has been heard by the Supreme Court of Canada and a decision can be expected to be rendered by Canada's highest court sometime this year.

*Key Takeaways for Taxpayers*

It is hoped that the Supreme Court of Canada will relieve the uncertainty caused by the FCA's decision in *MacDonald* and restore the previously accepted principle of Canadian tax law that a taxpayer's intention in holding a particular property is relevant to the characterization of gains and losses from that property. In the meantime, taxpayers should carefully review their investment holdings before entering into a derivative contract. If a derivative contract can be considered to mitigate or neutralize market fluctuation risk in respect of existing investments held by a taxpayer, there is a risk that the derivative contract will be considered a hedge even when the taxpayer entered into the contract for speculative purposes.

## Two Canadian Companies Moving to the United States

Like bookends to the calendar year, Maxar Technologies Ltd. (Maxar) completed its U.S. domestication at the start of 2019, and Encana Corporation announced in the fourth quarter of 2019 its intention to do the same. The transactions are described below.

### Maxar Technologies Leaves Canada, but Northern Private Capital Grabs Canadarm Maker for $1 billion

Maxar, a Canadian advanced space technology company with shares listed on both the Toronto Stock Exchange and the New York Stock Exchange, announced on January 2, 2019, that it had completed a U.S. domestication by way of a plan of arrangement.

Under the plan of arrangement, the shareholders of Maxar (other than dissenting shareholders) were deemed to have assigned their shares of Maxar to an acquisition company (AcquisitionCo), which was formed as a subsidiary of Maxar Technologies, for consideration that consisted of shares in Maxar Technologies Inc. (Maxar US), a U.S. subsidiary incorporated in Delaware prior to the time of the arrangement. In turn, Maxar US received one share of AcquisitionCo for each Maxar US share issued by Maxar US to a transferring Maxar shareholder. Concurrently, Maxar US redeemed and cancelled all of its shares that were held by Maxar in exchange for US$1 in cash, and Maxar and AcquisitionCo amalgamated to form a British Columbia unlimited liability company. At the conclusion of the arrangement, the former Maxar shareholders directly held shares in Maxar US, which in turn, directly owned the newly amalgamated entity holding Maxar's assets and liabilities.

Unlike Encana's U.S. domestication, the Canadian shareholders of Maxar were considered to have disposed of their Maxar shares at fair market value in exchange for the Maxar US shares.

Maxar's stated rationale for emigrating to the U.S., included (i) greater access to U.S. government contracts as part of its long-standing "U.S. Access Plan" and (ii) meeting the commitment provided on the acquisition of U.S.-based DigitalGlobe Inc. in 2017 to reorganize the corporate structure so that the ultimate parent of DigitalGlobe is a U.S. corporation. In addition, Maxar noted that a New York Stock Exchange listing as a U.S. domestic issuer should provide the company with greater exposure to institutional investors and an increase in global status.

Interestingly, at the end of 2019, Maxar US announced that it had entered into an agreement with a consortium of financial sponsors led by Northern Private Capital Ltd. to sell the MDA business (formerly MacDonald Dettwiler and Associates) for $1 billion to a Canadian affiliate of Northern Private Capital. MDA has a rich Canadian history, including its manufacture of both Canadarm 1 and Canadarm 2.

### Encana Corporation Moves to the United States

Encana, one of the largest Canadian energy companies with Canadian roots going back to the 19th century, gave Canada a surprise on Halloween 2019, when it announced its plan for U.S. domiciliation in early 2020. Encana subsequently announced on January 24, 2020, that it had completed the reorganization transactions. The plan was purportedly driven by the company's desire to access larger pools of U.S. passive investment capital, such as certain exchange-traded funds that may be prohibited from investing in non-U.S. securities. Further, Encana stated that its potential inclusion in U.S. stock market indices, as a U.S. domiciled corporation, may result in further capital inflows from passive investors leading to increased long-term shareholder value.

The U.S. domestication was effected by way of a reorganization carried out under a plan of arrangement. The crux of the reorganization entailed the following steps. First, Encana distributed to its shareholders a fraction of a share, with nominal value, in the capital of a newly formed Canadian subsidiary, Ovintiv Inc., in respect of each common share of Encana issued and outstanding. Subsequently, Ovintiv issued shares in itself to Encana's shareholders in exchange for all of the issued and outstanding shares of Encana. Encana then transferred shares in its U.S. subsidiary Alenco Inc. to Ovintiv, partly as proceeds of a share redemption and partly in consideration for Ovintiv assuming certain debts of Encana. Lastly, Ovintiv contributed the Encana shares into a newly formed Canadian subsidiary, and Ovintiv continued to Delaware.

The reorganization is expected to occur on a tax-deferred basis for Encana's Canadian shareholders as a tax-deferred share-for-share exchange. In addition, the reorganization is not expected to generate material corporate level Canadian or U.S. tax liabilities. This outcome is driven by a unique set of facts; specifically, the aggregate fair market value of Encana's assets appears to be less than the aggregate paid-up capital of the Encana common shares. It remains to be seen whether the Encana reorganization starts a broader trend on the heels of the Maxar transaction, or whether the unique facts driving the Encana and Maxar reorganizations limit the attractiveness of these reorganizations to other corporations.

## Canadian Tax Development Outlook for 2020

After the federal election in October of 2019, the Liberal Party of Prime Minister Justin Trudeau remained in power, albeit without a parliamentary majority. While the tenure of minority governments in Canada averages 18 months, it is expected that the Liberal government will be able to obtain the support of at least one of the opposition parties in enacting at least part of its tax legislative agenda. In this regard, in the run-up to the election, the Liberal Party's electoral platform provided some indication of the tax policies the government intends to pursue during a second mandate, generally signalling a more proactive approach regarding international taxation and the adoption of the OECD proposals relating to base erosion and profit shifting (BEPS).

Most significantly, the platform announced measures to "make sure that multinational tech giants pay corporate tax on the revenue they generate in Canada." This puts Canada squarely at the centre of the hottest current international tax controversy: how to tax the local sales and profits of large foreign multinational digital companies. France, along with certain other countries, has enacted unilateral digital services taxes, and Canada has now promised to enter the fray with a proposed 3% levy on specified advertising services and digital intermediation services that would apply to businesses with worldwide revenues of at least C$1 billion and Canadian revenues of more than C$40 million, irrespective of the presence of any physical nexus in Canada. Significantly, however, these campaign proposals were not reflected in the December 5, 2019 Speech from the Throne announcing the government's policy priorities, which may indicate that Canada has decided to await the conclusion of the OECD's work on multilateral initiatives knows as "Pillar 1" instead of moving ahead with unilateral measures. Another area of possible legislative change suggested by the Liberal Party's platform is the replacement of Canada's long-standing thin capitalization interest deductibility limitation with a rule that may closely follow the OECD BEPS recommendations, an emerging trend in a number of countries.

Regarding judicial developments, 2020 should see an FCA decision handed down in the government's appeal of the high-profile 2018 transfer pricing decision in *Cameco Corporation v The Queen* (not to be confused with the *Cameco* administrative case discussed above). In this case, the Tax Court of Canada rejected the government's three-pronged attack on the tax results of Cameco Canada's uranium sales to certain foreign affiliates that were resold into the market. One prong asserted that the intercompany transactions were a sham; the second invoked the transfer pricing recharacterization provisions dealing with transactions that lack commercial reality; and the third asserted a regular arm's-length transfer pricing adjustment. It is notable that this *Cameco* decision was recently applied by the Federal Court of Australia in the 2019 transfer pricing case of *Glencore Investments Pty Ltd. v Commissioner of Taxation*, which was won by the taxpayer.

Another eagerly awaited FCA decision regarding international taxation involves the foreign financial operations of the Loblaws group carried on through a Barbados subsidiary qualified as a bank under Barbados law. Loblaws is appealing a 2018 Tax Court decision, which held that its subsidiary's income was foreign accrual property income taxable in the hands of the Canadian parent on the grounds that it failed to meet a criterion of the "activity" test applicable to businesses of foreign subsidiaries. The two key issues the FCA will have to

address is whether the Tax Court erred by placing excessive importance on the way the subsidiary was financed (by its parent rather than by depositors) and the manner in which it understood the investment transactions carried out by the subsidiary.

[1] Davies Ward Phillips & Vineberg LLP acted as counsel for the taxpayer in *MacDonald v The Queen* at the Tax Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada.

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