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Featured Court Cases

Lehigh Cement Limited v. Her Majesty the Queen
[2010 FCA 124](#)

CCH Online News Tracker Summary: Federal Income Tax - Part XIII withholding tax - Interest paid to foreign lenders - Exemptions - General anti-avoidance rule ("GAAR") - The corporate taxpayer Lehigh (a Canadian resident) borrowed funds initially in 1986 from a Canadian bank consortium. That loan (the "Loan") was sold to a member of the Lehigh corporate group, International Services. In August, 1997 International Services sold to a Belgian Bank the right to collect interest, but not the principal, on the Loan. Although such interest was exempt from Part XIII withholding tax under s. 212(1)(b)(vii) of the Act, the Minister imposed withholding under the GAAR. The TCC affirmed the Minister's assessment (2009 DTC 1148). The FCA concluded that the GAAR was inapplicable, and that Lehigh's interest payments to the Belgian Bank were exempt from Part XIII tax under s. 212(1)(b)(vii). Taxpayer's appeal allowed.

Court: Federal Court of Appeal
Counsel: Williams, Matthew for the Appellant

Toronto Transit Commission v. M.N.R.
[2010 FCA 33](#)

Appeal by the Toronto Transit Commission from dismissal by the Tax Court of Canada of an appeal by the TTC from a determination by the Minister of National Revenue that monthly disability payments paid to employees constituted remuneration for pensionable employment and were subject to an employer's contribution under s. 9(1) of the Canada Pension Plan. The

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Tax Court judge concluded that provisions of the CPP should be interpreted harmoniously with those of related statutory schemes, namely, employment insurance and income tax. He held that, even though they were regarded as on a leave of absence and were not performing services because of their disability, the employees were in "employment" at that time, and the benefits paid to them constituted "remuneration for the pensionable employment". HELD: Appeal allowed. The Tax Court judge erred in his interpretation of the legislation. Subsection 2(1) defined "employment" as an activity: the performance of services under a contract of service. Subsection 9(1) provided that "remuneration" paid by an employer to an employee must be for the pensionable employment in order to require an employer's contribution. The payments in this case were not for the pensionable performance of services but were, as the terms of the plans made clear, an indemnity for the wages lost by employees who could not work. There was nothing in either the context of the provisions or the statutory objectives of the CPP to displace the most obvious meaning of its text.

Court: Federal Court of Appeal
Counsel: Williams, Matthew for the Appellant

The Queen v. MIL (Investments) S.A.
2007 DTC 5437

CCH Online News Tracker Summary: Capital gains – Treaty exemptions from tax – General anti-avoidance rule (“GAAR”) – Relying on the GAAR, the Minister assessed the corporate taxpayer (a non-resident corporation) for 1997 for tax on a capital gain realized by it on the sale of its shares of a public corporation to Inco (another public corporation) following a bidding war – On its appeal to the T.C.C. the taxpayer argued that the assessed capital gain was tax exempt under Article 13 of the Canada-Luxembourg Tax Convention (the “Treaty”)

In allowing the taxpayer’s appeal (2006 DTC 3307) the T.C.C. concluded, in part, that the taxpayer’s sale of its shares was not part of a series of transactions, and had primarily a bona fide purpose, so that an avoidance analysis was not necessary – In dismissing the Crown’s appeal, the F.C.A. concluded that: (a) it was unlikely that the TCC Judge made a palpable and overriding error on the “series of transactions” issue; and (b) the Crown’s appeal would fail in any event because there was no evidence that the tax benefit received by the taxpayer was an abuse or misuse of the provisions of the Act or the Treaty.

Court: Federal Court of Appeal
Counsel: Williams, Matthew for the Respondent

St. Michael Trust Corp. as Trustee of Garron Family Trust, et al., v. Her Majesty the Queen
2009 DTC 1287

[2009 TCC 450](#)

CCH Canadian Limited DTC Headnote: Taxation of off-shore trusts with Canadian beneficiaries — Capital gains — Treaty exemptions — General Anti-Avoidance Rule ("GAAR") — Whether trusts with Canadian beneficiaries established by non-resident settlor and with non-resident corporate trustee were resident in Canada and thus liable for Canadian tax on substantial realized capital gains — Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 39, 68, 75(2), 85, 94(1)(b), 94(1)(c), 94(6), 104(1), 104(2), 116, 245 — Canada–Barbados Income Tax Agreement, Articles I, III “person”, IV “resident of a Contracting State”, XIV(4), XXX(2) — Income Tax Conventions Interpretation Act, s. 4.1.

Court: Tax Court of Canada
Counsel: Williams, Matthew for the Appellants

The Attorney General of Canada v. James W. Buchanan

2002 DTC 7397

[2002 FCA 231](#)

CCH Canadian Limited DTC Headnote: Disability tax credits — Whether the taxpayer entitled to the disability tax credits claimed in the absence of a positive medical certificate — Whether the Tax Court Judge entitled to treat the negative medical certificate as positive upon finding that the psychiatrist producing it misinterpreted the relevant provisions of the Act — Income Tax Act, R.S.C. 1985 (5th Supp.), c. 1, as amended, ss. 118.3(1) and 118.4(1).

Court: Federal Court of Appeal
Counsel: Williams, Matthew for the Respondent

Spanish Centre for Language and Culture Inc. v. MNR 2006-1007(EI) and 2006-1008(CPP)

Court: Tax Court of Canada
Counsel: Williams, Matthew for the Appellant

The Queen v. Preston, Information No. 02-8735

Court: Ont. Court of Justice (Gen. Div.)
Counsel: Williams, Matthew for the Applicant