Tax Notes

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RECTIFICATION: SPECIFIC INTENT? GENERAL INTENT? WHAT IS THE TEST? — PART II

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Wolters Kluwer regularly features Dentons Canada LLP articles examining cases and topics of special interest.

In Part I of this article I discussed *Zhang v. Canada (Attorney General)*[1] and other recent Canadian cases that have discussed whether a taxpayer must show a specific intention to avoid a particular tax result or need only show a general intention to avoid tax to obtain rectification.

In Part II, I will discuss two earlier Ontario Court of Appeal cases that set the foundation for this debate as well as the recent UK decision and offer some conclusions.

Bramco[2] and *Juliar*[3]

I wrote about these two cases in an earlier article;[4] little did I know at that time that subsequent lawyers and judges would tie themselves up into unnecessary knots trying to reconcile the judgments, distinguish them, explain them, or ignore them. It is all unnecessary because *Bramco* was a rescission case, and even at that, it was decided wrongly in light of subsequent jurisprudence.

The taxpayer in *Bramco* owned two corporations, one of which was not an Ontario corporation. The non-Ontario corporation took title to some land in Ontario; the title could just as easily have been taken by the Ontario corporation. A much higher Ontario land transfer tax ("LTT") was payable as a result of the "error".

The relief applied for is set out in the Chambers decision as follows:

> In this application, Ms. Ho seeks an equitable order from this court, declaring the direction re title and the transfer to 002 null and void, and substituting a third purchaser corporation which is a Canadian resident, and rectifying the title register, nunc pro tunc.

So it was an application to rescind *ab initio* the transfer of title to the non-Ontario corporation and substitute the Ontario corporation.

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[1] 2015 DTC 5084 (BCSC).

[2] *771225 Ontario Inc. v. Bramco Holdings Co.* (1994), 17 OR (3d) 571 (Gen. Div.); aff'd. (1995), 21 OR (3d) 739 (CA), leave to appeal refused (1995), 48 RPR (2d) 320 (SCC).

[3] *Juliar v. AG of Canada*, 99 DTC 5743 (Ont. SCJ), aff'd. 2000 DTC 6589 (Ont. CA); leave to appeal denied [2000] SCCA no. 621. This case is cited in virtually every rectification case. Full disclosure: Dentons (under a former firm name) was counsel for the taxpayer.

[4] Joel Nitikman, "Many Questions (and a Few Possible Answers) About the Application of Rectification in Tax Law" (2005), 53 CTJ 941.

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There were two key pieces of evidence. First, the LTT issue was never considered when title was first transferred:

> It is clear from the evidence of Ms. Ho and of Mr. Wren, and from the fact that they both swore in affidavits that 002 was a resident of Ontario, that they made a mistake in this transaction. The mistake was that they believed that 002 was a resident of Ontario, and **consequently failed to turn their minds to the land transfer tax consequences of a non-resident purchasing agricultural land**. [emphasis added]

The other was that the taxpayer had applied to the Minister under the *Land Transfer Tax Act*[5] ("LTTA") to relieve the tax liability and that application was denied:

> No appeal was taken [by the taxpayer] from the [LTT] assessment, as it is conceded that the assessment is correct. However, Ms. Ho did apply to the Minister under s. 20 of the *Land Transfer Tax Act* for special consideration in light of the mistake. Section 20 provides as follows:
>
> > 20. If any doubt or dispute arises as to the liability to pay a tax or any portion of a tax demanded under the authority of this Act, or if owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as he or she deems proper.
>
> That application was rejected.

The Court denied the rescission application:

> Having regard to the applicable principles, the case at bar may be analyzed in three ways. The first is to say that the transaction that was intended was the purchase of the Brampton lands by Ms. Ho from Bramco. That intention was accomplished. Any tax savings from the structure of the transaction were merely the consequences or advantages to be gained from the transaction.
>
> The second is to say that Ms. Ho specifically intended that the purchasing vehicle be 002 instead of 225 in order to obtain an income tax advantage. That intention was also accomplished.
>
> The third analysis is that Ms. Ho also made the decision that 002 would be the purchaser rather than 225 believing the decision had no land transfer tax consequences because both were Ontario resident corporations. Ms. Ho never formed a **specific intention** with respect to minimizing land transfer tax on the transaction because, due to the mistake, she was already paying the minimum. Ms. Ho would have intended to close the transaction in the way which would minimize the land transfer tax payable, all other things being equal.
>
> I have added the underlined words, not because that qualifier was explored specifically in the evidence, but because of inferences which I have drawn from the evidence as a whole, and because it necessarily follows that where one did not form a **specific intention** regarding a matter beforehand, for whatever reason, one can only say afterward what one believes he or she would have done had a mistake not been made. [emphasis added]

In light of the *Pallen Trust*[6] case, we now know that this analysis is wrong: if the taxpayer made a causative mistake resulting in an unjust tax result, it may be rescinded. We can also say that Ms. Ho had no intention whatsoever in regard to LTT, neither specific nor general: believing that the transferee was an Ontario corporation, neither she nor her lawyer gave it any thought. On the other hand, one can assume that she never intended to pay any LTT. It is very likely that one could truly say: it was either no LTT or no deal at all. This is significant in light of *Juliar* as discussed below.

In the Court of Appeal in *Bramco*, the majority suggested that the taxpayer had applied originally for rectification because she wanted the register of titles rectified. That is true but ignores the fact that the main application was for rescission.

In any case, in the Court of Appeal the taxpayer clearly did not apply for rectification:

> In this court the appellants put their case on a slightly different basis. They argued that the facts of this case did not necessarily directly call into play the equitable principles respecting rectification but engaged the court's general equitable jurisdiction to relieve against mistake.

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[5] R.S.O. 1990, c. L.6.

[6] *Re Pallen Trust*, 2015 DTC 5061 (BCCA).

The majority denied this application for two reasons: the first was because the application under the LTTA for relief had been denied and "it seems well established that if an adequate legal remedy exists, equity will not grant relief".

The second was that Ms. Ho had used the non-Ontario company deliberately because it had non-capital loss carryforwards that the Ontario company did not have. Having made a deliberate choice, she could not now change that choice.

This again is not consistent with subsequent case law. There are a number of cases where taxpayers have taken a deliberate choice of action, not knowing that it would lead to an adverse tax result, and rescission has been allowed. That was the whole basis of the decision in *Pallen*.

Juliar

In *Juliar*, the facts were more complicated than the following summary, but for this purpose can be stated this simply: the taxpayer wanted to sell shares of one company to a related company. His accountant told him the shares had a high adjusted cost base, so he sold them for a note issued by the related company without worrying about a possible section 84.1 deemed dividend. It turned out that the accountant was wrong. The Court allowed an application for rectification to substitute shares of the related corporation for debt, so as to create a section 85 rollover instead of an 84.1 deemed dividend.

In my view, the key passages from the Court of Appeal are these:

> [25] The trial judge effectively found that the true agreement between the parties here was the acquisition of the half interest in the Gold's tobacco business by transfer of shares in 867 to Juliar Holdings in a manner that would not attract immediate liability for income tax. In these circumstances, that had to be, not a transaction pursuant to s. 84.1 of the *Income Tax Act*, but a shares for shares transaction. Hence, it was appropriate for the trial judge to permit rectification to reflect that transaction.
>
> [26] The appellant quarrels with the finding of fact that "it was the intention of the Juliars that the transactions would not trigger an immediate obligation to pay income tax." The appellant argues that this finding "was based more on an inference than on clear, direct, and admissible evidence."
>
> [27] This latter is a fair comment. It is possible, even probable, **that no one mentioned income tax** throughout the nine or 10 months in issue. **The plain and obvious fact, however, is that the proposed division had to be carried out on a no immediate tax basis or not at all.** [emphasis added]

In my opinion, the underlined sentence is true in the vast majority of cases that come before the courts. There may well be cases (*Bramco* may be one) where, on cross-examination the taxpayer or his or her advisors will admit that even if the tax mistake had been known, the transaction still would have been carried out as it was because there were other tax or non-tax benefits that outweighed the tax payable as a result of the mistake. But they will be few and far between. The fact that the taxpayer is applying for rectification means that the tax advisors have found a way to do the transaction, get the other benefits sought to be achieved, and avoid the adverse tax consequences realized. This underlined sentence is a statement of the taxpayer's true or real or overall (however one wants to say it) intention. Whether it is a specific intention or a general intention is simply irrelevant.

Mihail Tartsinis v. Navona Management Company[7]

The application in this case was to interpret a contract and alternatively to rectify it. The contract was for the sale of shares. There was a dispute about the sales price. It concerned a complicated adjustment mechanism.

In an exhaustive judgement, the Court held that, taking into account only the objective evidence available and ignoring the actual negotiations, the contract was to be interpreted so that an adjustment to the purchase price was required, as stated in the contract.

However, taking into account the actual negotiations and the true intentions of the parties, the Court found that the contract should be rectified to delete the adjustment mechanism, as it was never really intended. The test, said the Court, was this:

> As I described earlier, the essential function of the doctrine of rectification, as the law has long been understood, is to provide equitable relief in circumstances where the objective approach of the common law results in a document being interpreted in a way that does not reflect the **actual intentions of its makers**. [emphasis added]

[7] [2015] EWHC 57 (Comm).

In my view this is the correct test. It is also the Canadian test. *Kraft Canada Inc. v. Pitsadiotis*[8] is a case in which a pension deed was sought to be rectified; the Court held that it was dealing with a "unilateral" document, that is, a document that reflects the intention of only its maker, as unlike a contract there is no counter-party to the document. The Court stated the test as follows:

> [23] English courts have held that the settlor of a unilateral instrument may seek rectification by proving that the instrument does not express the settlor's **true intention**. [emphasis added]

Once again, no reference to specific or general intent, merely the true intention.

My last point is this: in *Performance Industries Ltd. v. Sylvan Golf & Tennis Club Ltd.*[9] the Court said: "I conclude that due diligence on the part of the plaintiff is not a condition precedent to rectification."

In my view, it is simply impossible to reconcile this statement with a "requirement" to prove that there was a specific intention to avoid the tax result that occurred. If there is no requirement for due diligence, it means that rectification is available even when there is a mistake — even a negligent mistake — in the tax planning.[10] If one had actually intended to avoid a specific tax result, it is extremely unlikely that most rectification applications would be brought: they are all brought exactly because someone did not focus specifically on a particular tax issue.

Conclusion

One can hope only that, sooner or later, there will be a common law case where there is enough money involved that an appeal to the Supreme Court of Canada is warranted; one can hope further that the Court will set the test straight: not the specific intention, not the general intention, but the true intention. In the vast majority of cases, the inference drawn in *Juliar* will be true: no tax or no deal. Based on such an inference, rectification should usually be granted.

A number of tax lawyers from Dentons Canada LLP write commentary for Wolters Kluwer's Canadian Tax Reporter *and sit on its Editorial Board as well as on the Editorial Board for Wolters Kluwer's* Income Tax Act with Regulations, Annotated. *Dentons Canada lawyers also write the commentary for Wolters Kluwer's* Federal Tax Practice *reporter and the summaries for Wolters Kluwer's* Window on Canadian Tax. *Dentons Canada lawyers wrote the commentary for* Canada–U.S. Tax Treaty: A Practical Interpretation *and have authored other books published by Wolters Kluwer:* Canadian Transfer Pricing *(2nd Edition, 2011);* Federal Tax Practice; Charities, Non-Profits, and Philanthropy under the Income Tax Act; *and* Corporation Capital Tax in Canada. *Tony Schweitzer, a Tax Partner with the Toronto office of Dentons Canada LLP and a member of the Editorial Board of Wolters Kluwer's* Canadian Tax Reporter*, is the editor of the firm's regular monthly feature articles appearing in* Tax Topics.

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CURRENT ITEMS OF INTEREST

Economic Update

On Friday, November 20, 2015, Bill Morneau, Canada's new Finance Minister, presented his *Update of Economic and Fiscal Projections 2015*. The Finance Minister explained that lower tax revenue, due to lower than expected GDP growth combined with increased expenditures on employment insurance claims and other charges related to employee benefits, resulted in a forecast strikingly different than the one presented by the previous government in the April 21 spring budget.

Indeed, while Joe Oliver's last budget predicted a $2.4 billion surplus for the year ending March 31, 2016, the government is now projecting a $3 billion deficit. For fiscal year 2016-17, the deficit is expected to reach $3.9 billion, compared with the $2.7 billion surplus announced in the April budget. These deficits are expected to shrink over the following years and revert to a surplus of $1.7 billion in 2019-20.

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[8] 2009 CanLII 9421 (ONSC).

[9] 2002 SCC 19 at paragraph 66.

[10] In both *Kraft Canada*, at paragraphs 64 and 66, and *Thomas Hugh Bartlam v. Coutts & Co*, [2006] EWHC 1502 (Ch.) at paragraph 11, the Courts granted rectification even though the mistake was caused clearly by a professional advisor's negligence. This also shows that the ruling in *Bramco* to the effect that the existence of an alternative legal remedy (suing the professionals) means that rectification cannot be granted was incorrect.

However, these figures do not take into account the stimulus spending promised by Justin Trudeau in the last electoral campaign. This could add up to another $10 billion in spending per year over the next three years. Nevertheless, Mr. Morneau maintains the goal of returning to a balanced budget by 2019-20. Accordingly, it will be interesting to see how this new analysis of economic prospects will affect the Government's plans to enact income tax reductions for the middle class, coupled with increases for the rich as early as January 2016. We should know soon as Parliament will reconvene on December 4, with the possible tabling of a mini-budget shortly thereafter; a necessary move if tax rate changes are to be in place by January 2016.

Electronic Filing of Information Returns for 2016

On November 9, 2015, the CRA announced that preparers of information returns for the 2016 filing season beginning on January 11, 2016, could find the following information on their website:

- the new XML specifications for all types of returns at: http://www.cra-arc.gc.ca/esrvc-srvce/rf/xmlspcs2016/menu-eng.html
- the CRA schemas at: http://www.cra-arc.gc.ca/esrvc-srvce/rf/dnwldschm-eng.html

The CRA noted that, due to internal system updates, returns received between November 26, 2015, and December 17, 2015, will not be updated to the My Business Account portal. During this period, users will not be able to view their updated return status or retrieve TFSA reject lists or Part XVIII incomplete lists. The My Business Account portal will be updated when the system becomes available again on January 11, 2016.

FOCUS ON CURRENT CASES

This is a regular feature examining recent cases of special interest, coordinated by *John C. Yuan* and *Christopher L.T. Falk* of McCarthy Tétrault LLP. The contributors to this feature are from McCarthy Tétrault LLP, Montreal, Toronto, Calgary, and Vancouver.

No Rescission where TCC Proceedings Outstanding

***JAFT Corp v Jones et al*, 2015 DTC 5095 (Manitoba CA)**

The reasons for judgment in *JAFT Corporation* provide an interesting look at the circumstances in which a provincial superior court should assume jurisdiction to provide equitable relief that is not available from the Tax Court of Canada in a matter in which there is a tax appeal outstanding before the Tax Court.

In 2005 and 2006, JAFT Corporation ("JAFT") paid salaries to three of its employees, two of whom were JAFT's shareholders and directors. The salaries were paid in connection with work that JAFT was undertaking in connection with sick building syndrome, which work the parties anticipated would qualify for SR&ED tax credits. Apparently due to financial difficulties, JAFT did not deduct and remit applicable employee source deductions but, instead, intended to use the tax credit refunds to remit these amounts, as it had done for 2003 and 2004.

While the CRA had allowed JAFT's claims for SR&ED tax credits in 2003 and 2004, the CRA disallowed the tax credit claims for 2005 and 2006. JAFT objected, but did not appeal following the CRA's confirmation of the assessments.

The work that had been undertaken by the three employees was governed in part by a development agreement between JAFT and the three employees. The agreement provided that the employees were responsible for ensuring that the work met the requirements of the SR&ED program, and that to the extent that any of the work failed to so qualify, the employees would not be entitled to remuneration in respect of such work and would repay the overcompensation to JAFT. In 2007, the three employees repaid the salaries as required by the development agreement, and JAFT sought to amend the T4s in respect of the salaries that were repaid.

The CRA assessed JAFT, along with its directors, for unpaid source deductions for 2005 and 2006, and did not allow the amendments to the T4s. JAFT and the directors appealed to the Tax Court in respect of the failure to deduct and remit source deductions. These appeals were held in abeyance pending applications brought by JAFT and the directors for an order rescinding the salaries and the employment contracts. The applications for a rescission order were brought before the Manitoba Court of Queen's Bench given that rescission is a form of equitable relief which the Tax Court is not empowered to grant.

The judge of the Manitoba Court of Queen's Bench declined to exercise her discretion to assume jurisdiction to grant the equitable relief sought. She indicated that:

> In all the circumstances [. . .], I have concluded that I should decline to exercise jurisdiction to grant the relief sought. The TCC may make findings in its tax appeal decisions which will include contractual, employment and commercial matters. Much of what is being argued by JAFT relates to such issues. [. . .] I am satisfied that it would be inappropriate to allow a parallel running of litigation with respect to these matters. This is particularly so when rescission, if granted, would serve to alter the essence of the litigation before the TCC and, hence, inappropriately interfere with the jurisdiction assigned to a specialized tribunal. [. . .I]t is more efficient to have one court determine these types of litigious matters.

JAFT and the directors then appealed to the Manitoba Court of Appeal. As stated by the Court of Appeal:

> The appellants assert that the application judge erred in declining jurisdiction in these circumstances and in not granting the remedy of rescission. They say that the circumstances at issue arise from honest and fundamental mistakes which have resulted in significant, and unexpected, tax liabilities. As such, these are the sort of circumstances for which equity has provided the remedy of rescission.
>
> With respect to the decision to decline to exercise jurisdiction, they argue that the application judge erred in law when she concluded that the application was a parallel proceeding to those in the Tax Court because the Tax Court does not have the jurisdiction to grant the remedy of rescission.

Regarding the appellants' position that the application judge erred in law in declining jurisdiction because the Tax Court does not have the jurisdiction to grant an equitable remedy, the Court of Appeal stated that:

> This raises the crucial issue of whether the Tax Court can grant any acceptable alternative remedies, if it cannot grant rescission.
>
> The appellants' claim for rescission of the employment contracts and the 2005 and 2006 salaries is based on their position that there was an honest and fundamental mistake as to the effect of the agreements and transactions that led to the tax liabilities that are now in dispute. That is the very issue that the appellants have appealed to the Tax Court. If there is a finding that no tax liability is owing, then there will have been no mistake and no basis upon which to grant rescission. Therefore, the determination of whether the tax liability is owing is fundamental to the appellants' position.
>
> The Tax Court has "exclusive original jurisdiction" to determine references and appeals arising under the *Income Tax Act*.

The Court of Appeal determined that there was an adequate alternative remedy available from the Tax Court, noting that:

> The Tax Court has the jurisdiction pursuant to section 171(1) of the *Income Tax Act* to dismiss an appeal, or allow it and provide the remedy of vacating, varying, or referring the assessment back to the Minister for reconsideration and reassessment.
>
> As noted earlier, the appellants' position before the Tax Court, which is inconsistent with seeking to have the employment contracts and salaries rescinded, is that the development agreement and the reversal of their original salary transactions should be upheld, and their assessments vacated or varied. The Tax Court could provide that remedy or it could refer the assessments back to the Minister after ruling on the effect of the agreements and the salary transactions and applying the applicable income tax legislation.

The Court of Appeal suggested that the Tax Court may be able to reach a decision based upon the Tax Court's conclusion that rescission would have applied notwithstanding that the Tax Court itself was not empowered to grant a rescission order. The Court of Appeal stated that:

> [W]hile the Tax Court cannot grant an order of rescission that will be effective for all purposes, it can rule on the validity of the employment contracts, the development agreement and the salary transactions as part of its role in determining whether the tax assessments are correct. It will then use those determinations to decide whether to dismiss the appeal, vary or vacate the tax assessments or refer the matter back to the Minister. This, in my view, is an adequate alternative remedy.

In respect of the significant body of jurisprudence in which the equitable remedy of rectification had been allowed notwithstanding that there were proceedings before the Tax Court, the Court of Appeal was of the view that a significant difference exists between rectification and rescission. As stated by the Court of Appeal:

> Courts can order rectification of a document so that its words express the true nature of a transaction. The document, as rectified, remains in effect. Here, the appellants do not seek that remedy. Rather, they are seeking an order that the employment contracts and the 2005 and 2006 salaries be rescinded. In effect, they seek a declaration that the contractual arrangements that they entered into did not exist.

In light of the above, the Court of Appeal dismissed the appeal. The Court of Appeal noted that:

> The application judge considered the applicable law and addressed numerous considerations relevant to the question of whether she should exercise her discretion to decline jurisdiction, including the specialized nature of the Tax Court and its ability to consider applicable law and make relevant findings, the pending proceedings before it, the intended purpose of the application and the importance of judicial economy. She did not act on a wrong principle or fail to give weight to relevant considerations. Furthermore, she did not misdirect herself, nor is her decision so clearly wrong as to amount to an injustice. Rather, in my view, her decision was the appropriate one in the circumstances.

With respect, one might question whether an adequate remedy is available from the Tax Court in cases in which the facts would support rescission but for the Tax Court proceedings, as the tax results may differ depending upon whether a contract has been rescinded. The Tax Court, which does not have the jurisdiction to grant equitable relief such as rescission or rectification, is likely, in the writer's view, to be highly reluctant to reach a decision on the basis of its conclusion that such relief would be available from a provincial superior court. It also seems somewhat incongruous for the determination of whether a provincial superior court should assume jurisdiction to depend upon whether the application is brought before or after a tax dispute reaches the Tax Court. Accordingly, it will be interesting to see how courts in future cases deal with applications for equitable relief brought in provincial superior courts in matters in which there are Tax Court proceedings outstanding.

— *Chris Falk*

RECENT CASES

Deduction of losses denied where loss acquisition transaction violating general anti-avoidance rule

Veracel Inc. ("Veracel") was a company engaged in the development and manufacture of automated medical diagnostic instruments. In 2002, the company filed a proposal in bankruptcy and ceased carrying on business. At that time, Veracel had substantial tax attributes, including about $16 million in non-capital losses. In early 2004, Veracel solicited proposals in connection with those tax attributes, and a series of transactions was ultimately carried out under a plan of arrangement. As part of that series of transactions, a group of investors acquired shares in Veracel, following which Veracel amalgamated with another company, Birchcliff Energy Ltd. The investors in Veracel then received shares in the amalgamated company. That company then sought to deduct the $16 million in non-capital losses originally incurred by Veracel. The deduction was denied by the minister and the company appealed from that assessment.

The appeal was dismissed. The minister took the position that the acquisition of shares in Veracel by the group of investors was a sham, in that those investors would not enjoy the rights and privileges attached to those shares. The minister also argued that the group of investors constituted a "group of persons" which acquired control of Veracel. Finally, it was argued that GAAR applied to the entire series of transactions so as to disallow the deduction of non-capital losses by the amalgamated company.

The Court dealt first with the argument that the share issuance by Veracel was a sham, and rejected that conclusion. In the Court's view, the group of investors was promised that they would receive shares in Veracel and that those shares would become shares in the amalgamated company once the amalgamation had taken place. The Court held that that was what had taken place, and that the brevity of the share ownership in Veracel did not negate the fact that the investors did become shareholders of the company. The Court then considered whether the group of investors

constituted a "group of persons" as defined in the change of control rules and concluded that they did not. Members of that group had provided irrevocable proxies to approve the plan of arrangement but that did not, in the Court's view, bring them within the definition of "group of persons". The Court noted that the issuance of proxies is a common feature of corporate law, and to treat shareholders as a "group of persons" solely on the basis of the granting of proxies to the same person to vote their shares would interfere with common business practices.

The Court then considered whether GAAR applied to the series of transactions and held that it did. A determination of the application of GAAR requires a three-step analysis. The Court must determine whether a tax benefit has been created, whether the transaction giving rise to the tax benefit was an avoidance transaction and whether such avoidance transaction was abusive, as defined in subsection 245(4) of the *Income Tax Act*. The Court held that the preservation and use of Veracel's tax attributes was a tax benefit. Further, the series of transactions could be characterized as an avoidance transaction, in that it resulted in a tax benefit and was not undertaken primarily for a genuine non-tax purpose. The minister argued, and the Court agreed, that the primary purpose for the manner in which the transaction was structured was to preserve and utilize Veracel's tax attributes. Finally, the Court considered whether the transaction was abusive and concluded that it was. The Court held that the transactions were structured to circumvent the application of a deeming rule respecting a change in control, by attempting to qualify those transactions under an exception found in those rules. The Court concluded that the transactions were structured and carried out in a manner which did harm to the object, spirit and purpose of that exception. The series of transactions contravened the GAAR, and consequently the loss streaming rules applied to prevent the amalgamated company from using Veracel's tax attributes.

Birchcliff Energy v. The Queen, 2015 DTC 1198

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