Federal Court of Appeal | Cour d'appel fédérale

Ottawa, June 26, 2020 – Judgments were issued today by the Federal Court of Appeal (Webb J.A., Rennie J.A. and Mactavish J.A.) in files A-349-18 and A-193-19: *Her Majesty the Queen. v. Cameco Corporation*, 2020 FCA 112.

The following is an informal, unofficial description of the Court's judgments and reasons. The legal text of the Court's judgments and reasons are alone authoritative.

Facts: The Crown appeals from the: (i) decision of the Tax Court of Canada to reverse significant adjustments made by the Minister of National Revenue (Minister) under section 247 of the *Income Tax Act* (the Act) to the income of the Respondent and (ii) order awarding costs to the Respondent in the amount of $10,250,000.

The Respondent is a large uranium producer and supplier of the services that convert one form of uranium into another form. In 1999, the Respondent designated its Luxembourg subsidiary, Cameco Europe S.A. (CESA) to be the signatory to the agreements related to the purchase, directly and indirectly, of uranium that Russia had formerly used in its nuclear arsenal. The same year, the Respondent also formed a subsidiary company in Switzerland which, in 2001, changed its name to Cameco Europe AG (SA, Ltd) (CEL). In 2002, CESA transferred its uranium business to CEL. CEL also agreed to purchase the Respondent's expected uranium production and its uranium inventory. In subsequent years, because of a substantial increase in the price of uranium, CEL realized significant profits from buying and selling uranium. The Minister reallocated the profits made by CEL to the Respondent and, as a result, added substantial amounts to the Respondent's income for taxation years 2003, 2005 and 2006.

Issue: Can the Minister reallocate all of the profit of a foreign subsidiary of a Canadian corporation to its Canadian parent corporation under paragraphs 247(2)(*b*) and (*d*) of the Act (A-349-18)?

Decision: The appeals are dismissed. Paragraphs 247(2)(*b*) and (*d*) of the Act were interpreted based on a textual, contextual and purposive analysis. In particular, the focus was on subparagraph 247(2)(*b*)(i) of the Act which applies if the transaction or series of transactions would not have been entered into between persons dealing at arm's length. The Court concluded that this condition is assessed objectively rather than subjectively. Thus, this condition is satisfied if no arm's length persons would have entered into the transaction or the series of transactions in question, under any terms and conditions. It is not sufficient to simply examine whether the particular taxpayer would have entered into the transaction or series of transactions in issue with an arm's length party.

The Crown did not appeal any of the factual findings made by the Tax Court Judge, in particular his findings that the agreements to purchase the Russian sourced uranium did not have any value when they were signed and that the prices charged by the Respondent for the sale of uranium to CEL were in the range of arm's length prices.

There was no basis to find that parties dealing with each other at arm's length would not have bought and sold uranium or transferred between them the rights to buy the Russian sourced uranium. Therefore, the appeal in A-349-18 was dismissed.

The appeal of the award of costs was dismissed, as it was contingent on success in appeal A-349-18.