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International Corporate Tax: Recent Case Law and CRA Technical Interpretations Update

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AGENDA

1. Husky Energy Inc. v. The King (2025 FCA 176)
2. Wuswig Inc. v. The King (2025 TCC 147)
3. Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)
4. CRA Views 2025-1055511C6 – Cash Pooling
5. CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII
6. CRA Views 2025-1063771C6 – Computation of FAT

Husky Energy Inc. v. The King (2025 FCA 176)

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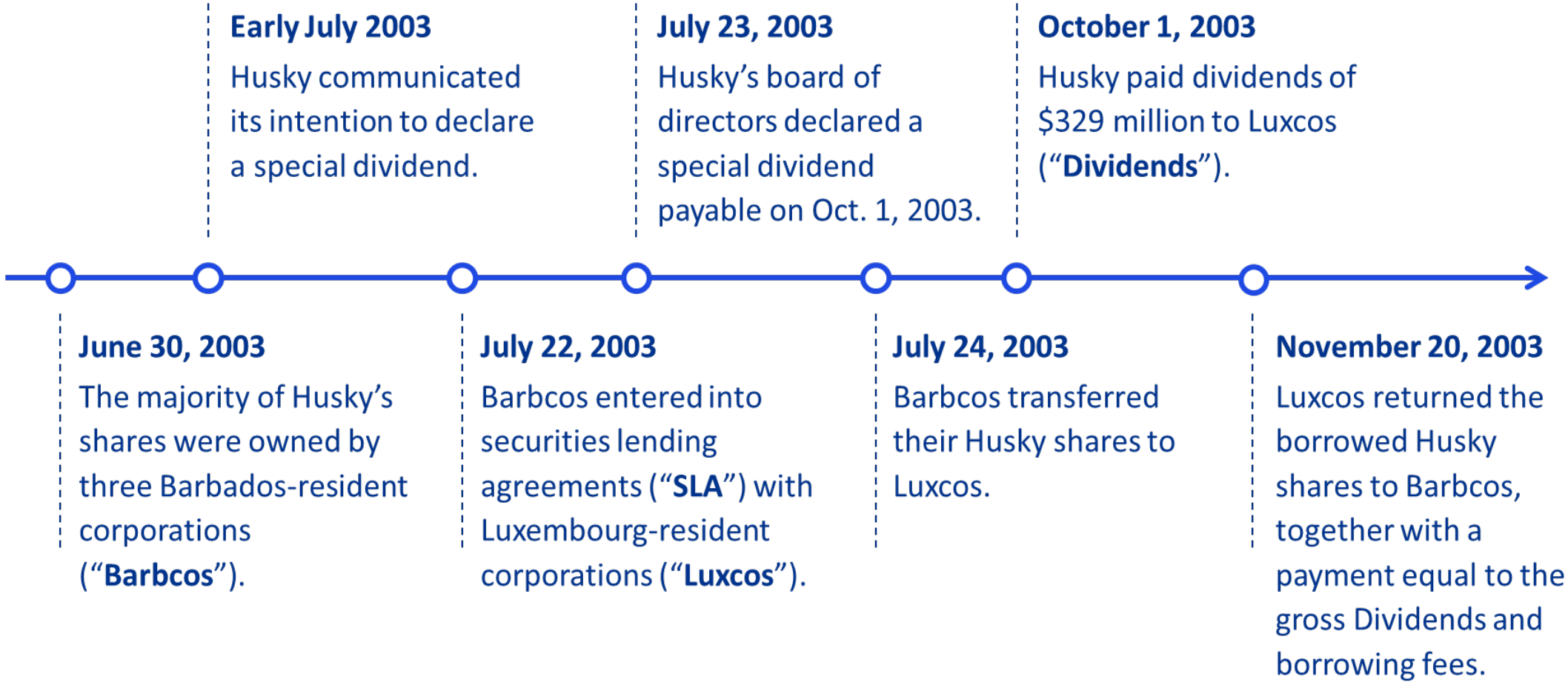
Husky Energy Inc. v. The King (2025 FCA 176)

Timeline



Husky Energy Inc. v. The King (2025 FCA 176)

Assessment

- Husky paid $329 million of dividends (the "**Dividend**") to Luxembourg-resident corporations (the "**Luxcos**") and withheld at the 5% rate provided for by Article 10(2)(a) of the Canada-Luxembourg tax treaty (the "**Luxembourg Treaty**").
- The Minister assumed that the Barbcos were the beneficial owners of the Dividends and assessed Husky under ITA 215(6) for failing to withhold tax on the Dividends at the 15% rate under Article X(2) of the Canada-Barbados tax treaty ("**Barbados Treaty**"), rather than the 5% tax withheld. The resulting shortfall was $33 million.
- On the same assumption that the Barbcos were the beneficial owners of the Dividends, and, therefore, liable for the tax on the dividends under ITA 212(2), the Minister assessed the successors to the Barbcos for the shortfall.

Husky Energy Inc. v. The King (2025 FCA 176)

Tax Court of Canada

- Barbcos' Assessment
  - The Tax Court interpreted ITA 212(2) to mean that the "non-resident" in question is the non-resident to whom the dividend is paid, not the beneficial owner thereof.
  - Because the Dividends were paid to the Luxcos, only they were liable for tax on the Dividends and could be assessed for the shortfall.

Husky Energy Inc. v. The King (2025 FCA 176)

Tax Court of Canada (continued)

- Husky's Assessment
  - The Luxcos were not the beneficial owners of the Dividends because they were obligated to pay the amount of the Dividends to the Barbcos in the form of compensation payments.
  - The legal substance of the transactions were such that the Barbcos always retained their right to the full economic value of the Dividends.
  - The Luxcos were the "temporary custodians" of the funds received.
  - Husky was required to withhold at the 25% tax rate under ITA 215(1) and ITA 215(6), but the Tax Court did not vary the CRA assessment of 15%.
  - Reliance on the GAAR would be necessary only if a reduced rate applied because the Luxcos were the beneficial owners of the Dividends.

Husky Energy Inc. v. The King (2025 FCA 176)

Issues

1. Did the Tax Court err in concluding that the Luxcos were not the beneficial owners of the Dividends under Article 10(2)(a) of the Canada-Luxembourg tax treaty ("**Luxembourg Treaty**")?
2. Did the Tax Court err in concluding that Husky was required to withhold and remit a tax corresponding to 25% of the Dividends?

Husky Energy Inc. v. The King (2025 FCA 176)

Decision and Analysis: Beneficial Ownership Factors

- Applying the beneficial ownership test in *Prévost Car* (2008 TCC 231, aff'd in 2009 FCA 57), the Federal Court determined that the Luxcos were not the beneficial owners of the Dividends.
- According to *Prévost Car*, a beneficial owner of a dividend is the person who:
  - enjoys and assumes all the attributes of ownership,
  - receives the dividend for that person's use and enjoyment,
  - assumes all the risk and control of the dividend, and
  - is not accountable to anyone for how to deal with the dividend.

Husky Energy Inc. v. The King (2025 FCA 176)

Decision and Analysis: Beneficial Ownership Factors (continued)

- The Luxcos did not assume any risk with respect to the Dividends.
  - Hedge agreements with related parties compensated the Luxcos for any foreign exchange loss realized with respect to the Dividends at no cost.
  - Luxembourg tax ruling concluded that the Luxcos would "not bear any material risk in connection and the Husky shares" and that "profits and risks on the Husky shares will be ultimately borne by [related] companies."
  - *Velcro* (2012 TCC 57) dealt with beneficial ownership in a similar context. However, contrary to the circumstances here, the Tax Court identified risks that were not reduced by agreements.

Husky Energy Inc. v The King (2025 FCA 176)

Decision and Analysis: Legal Substance

- Legal substance of the transaction must also be considered.

> "Legal substance refers to interpreting contracts and considering all the circumstances to determine the legal rights and obligations arising from a transaction. This process, approved by the [Supreme Court], ensures that the *true* legal relationship or the *true* legal effects of a transaction will govern rather than the formal description or nomenclature used […]" (FCA decision at para. 62).

- It was clear from the outset that the Barbcos would benefit from the Dividends: the Luxcos were legally obligated to pay an amount equal to the gross amount of the Dividends to the Barbcos within seven weeks of receiving the Dividends from Husky.
- The SLAs and circumstances revealed that the legal relationship between the Luxcos and the Barbcos were not "true securities lending agreements":
  - To accept that the Barbcos agreed to allow the Luxcos to sell the borrowed Husky shares would defy common sense.
  - No collateral was provided by the Luxcos to the Barbcos.

Husky Energy Inc. v The King (2025 FCA 176)

Decision and Analysis: Treaty Interpretation and the OECD Commentaries

- Canada and Luxembourg chose to reserve the benefits of the Luxembourg Treaty to the "beneficial owner" of dividends (*Alta Energy,* 2021 SCC 49).
- The OECD commentaries confirm that the "beneficial ownership" requirement is to ensure that conduits cannot benefit from treaty provisions.
- Luxembourg found that the Luxcos lacked "economic ownership" of the Dividends.
- A formal owner with "very narrow powers" cannot normally be regarded as the beneficial owner of the Dividends.
- International Jurisprudence: A Swiss case found that a dividend recipient with an obligation to forward the Dividend to another person is not the beneficial owner thereof.

Husky Energy Inc. v The King (2025 FCA 176)

Decision and Analysis: Tax Court's Interpretation of ITA 212(2)

- ITA 212(2) applies solely to the direct recipient of a dividend.
- This interpretation could have a negative impact on ordinary commercial transactions where the direct recipient of a dividend is not its beneficial owner.
- The Federal Court "cast doubt" on the Tax Court's interpretation of ITA 212(2); however, it did not need to decide whether the Tax Court erred in law in concluding that ITA 212(2) did not apply to tax the Barbcos.

> "That said, these reasons should by no means be understood as endorsing the Tax Court's interpretation of subsection 212(2) of the *Income Tax Act*".

Husky Energy Inc. v The King (2025 FCA 176)

Comments

- Husky filed an application for leave to appeal on November 28, 2025, which is currently pending before the Supreme Court of Canada.

Wuswig Inc. v. The King (2025 TCC 147)

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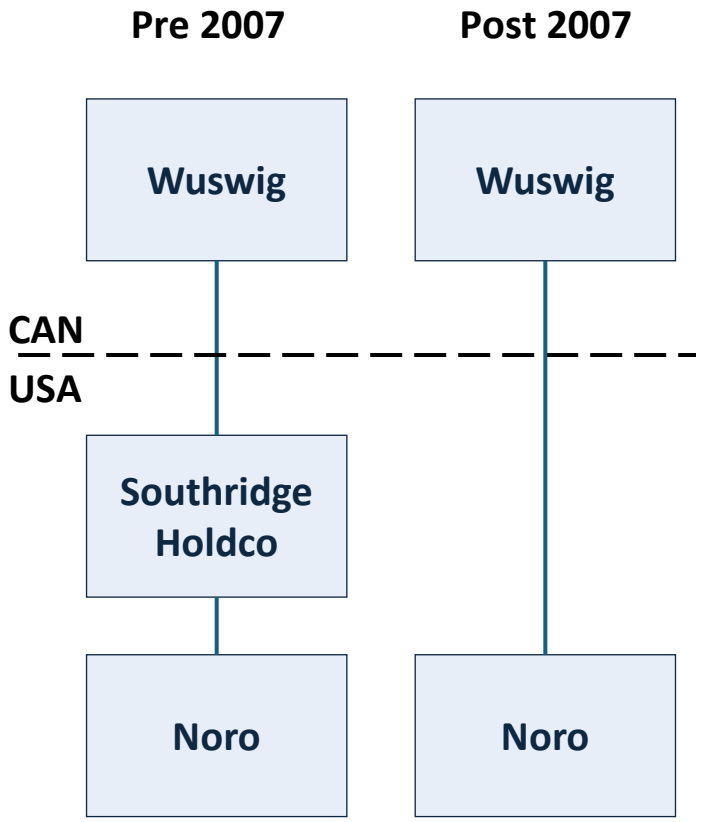
Wuswig Inc. v. The King (2025 TCC 147)

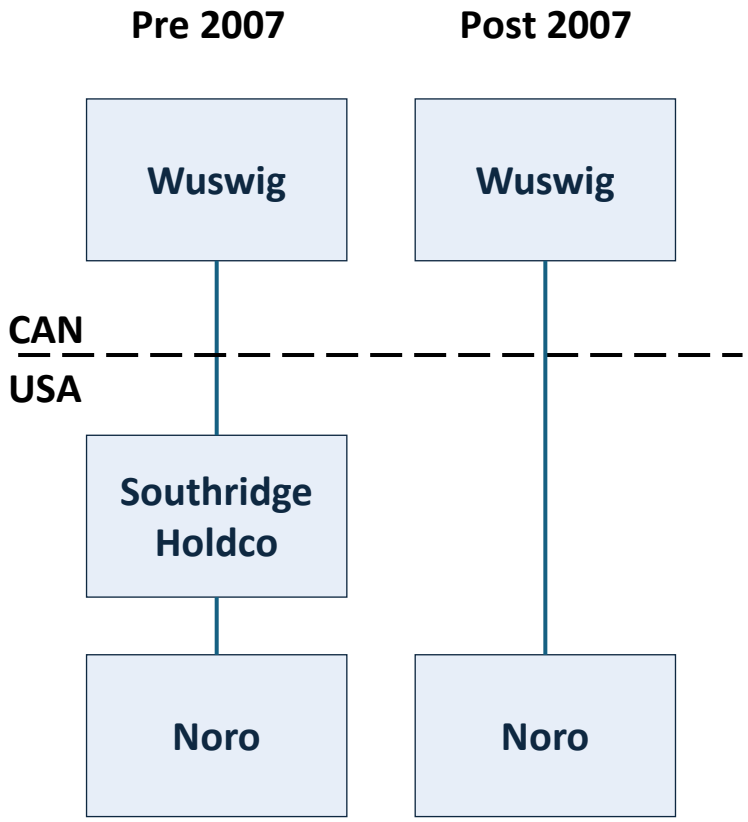


Facts

- Prior to 2007, Wuswig held two foreign affiliates, Noro Holdings and Southridge Holdings. From the period 1999 to 2007, Wuswig received exempt or tax-free dividends totaling $19M.
- Wuswig carried out the "Reorganization" in 2007, a series of transactions which included:
  - incorporation of a new foreign affiliate, Southridge 2007.
  - Southridge Holdings merged into Southridge 2007.
  - Southridge 2007 was continued into Canada and became a resident of Canada, renamed to Wuswig Holdings 2007.
  - Wuswig Holdings 2007 wound up.

***simplified org chart**

Wuswig Inc. v. The King (2025 TCC 147)



Facts

- As a result of the series of transactions, Wuswig disposed of shares in its Canadian subsidiary, Wuswig Holdings 2007 and realized a capital loss of $5M.
- ITA 93(2) and ITA 93(2.01) did not apply to the series of transactions, however Wuswig noted if they had, the capital loss would have been reduced to nil.
- Wuswig utilized the capital loss in its 2007, 2010, 2011, 2012, 2015, 2018 and 2020 tax years.

***simplified org chart**

Wuswig Inc. v. The King (2025 TCC 147)

Assessment

- In 2015, CRA issued a notice of determination under ITA 152(1.11) and ITA 245 with respect to Wuswigs 2007 tax year and reduced the capital loss carryforward balance by $4.5M (representing the original $5M loss less the portion utilized in statute barred years 2007, 2010 and 2011).
- In 2018, CRA issued a notice of assessment for Wuswig's 2018 tax year, denying the capital loss carryover from 2007 to the 2018 tax year to reduce the current year capital gain of $334K.

Wuswig Inc. v. The King (2025 TCC 147)

Issues

1. Did the Minister err in applying GAAR, under ITA 152(1.11) and ITA 245,
    - Re-assessing the 2018 taxation year, denying the capital loss carryover from its 2007 tax year against the capital gain arising in 2018; and
    - Reducing Wuswig's capital loss carry-forward balance arising from a 2007 transaction?

2. Can the Minister rely on a notice of determination under ITA152(1.11) to deny a tax benefit and to apply GAAR to a statute-barred year?

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: Legal Framework for GAAR

- The Tax Court applied the following framework to determine whether GAAR applied, referencing the thorough guidance by the Supreme Court in *Deans Knight* (2023 SCC 16):
  - determine whether there is a "tax benefit" arising from the series of transactions
  - determine whether there was an avoidance transaction
  - determine whether the avoidance transaction was abusive
    - Identify object, spirit and purpose of the provisions giving rise to the tax benefit
    - Whether the avoidance transaction frustrates the object, spirit or purpose of the provisions

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: 2018 Tax Year, Benefit and Avoidance Transaction

- Wuswig confirmed that there was a tax benefit arising in the 2018 tax year from the use of the $334K of loss to reduce taxable income (which led to a reduction of tax payable), the Tax Court concluded in agreement.
- Wuswig submitted that the series of transactions made in 2007 that created the capital loss were an avoidance transaction under ITA 245(3), the Tax Court concluded in agreement.
- The Tax Court considered whether the avoidance transaction was abusive and frustrated the object, spirit and purpose of ITA 93(2) and ITA 93(2.01).

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: Tax Court's Interpretation of ITA 93(2) and ITA 93(2.01)

- The Tax Court performed a textual, contextual and purposive analysis of ITA 93(2) and ITA 93(2.01). The Tax Court noted that a key source of information was the Department of Finance's explanatory notes.
- The Tax Court considered the object, purpose and spirit of ITA 93(2) and ITA 93(2.01) and concluded the following:
  - They do not distinguish between real and artificial economic losses;
  - They do not operate independently of the capital gains regime;
  - Parliament's objective is to limit the recognition of losses created through the extraction of corporate value on a tax-free basis by payment of tax-free dividends; and that
  - The objective of these rules is to create an exception to the basic rule in ITA 3.

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: Valid Alternative Transaction

- Wuswig submitted an alternative transaction via a series of financing transactions that would ultimately result in the same amount of capital loss being realized. Proposing that the alternative transaction demonstrates that the avoidance transaction is not abusive.
- The Tax Court relied on the conditions listed out in *3295940 Canada* (2024 FCA 42), to determine if Wuswig was able to demonstrate that there was a valid alternative transaction:
  - The transaction (or series) must be available under the ITA
  - The transaction must not be so remote as to be practically not feasible
  - The transaction must have a high degree of commercial and economic similarity to the transaction under review
  - The transaction must generate approximately equivalently favourable tax consequences
  - The transaction must not be abusive of GAAR

- TCC found that Wuswig was not able to demonstrate that there was a valid alternative transaction, specifically the alternative transaction proposed did not have a high degree of commercial and economic similarity to the transaction under review and that there was about $765K difference in the alternative loss realized such that it was not “approximately as favourable”.

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: 2018 Tax Year, Abuse of an Avoidance Transaction

- The Tax Court considered that had Southridge 2007 not immigrated to Canada prior to the wind up, ITA 93(2) and ITA 93(2.01) would have applied to reduce the loss to nil.
- That ITA 93(2) and ITA 93(2.01) are meant to limit the realization of a capital loss on shares of a FA when Canco has received tax-free dividends from the FA and that the avoidance transaction defeated this rationale.
- That the provisions were frustrated as the $19M of tax-free dividends previously received by Wuswig were not subtracted from the capital loss realized on disposition of shares of Wuswig Holdings 2007.
- The Tax Court concluded that the Minister correctly denied the capital loss carryover of $334K from 2007 to the 2018 tax year.

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: 2007 Tax Year, Reduction of Capital Loss carryover

- Wuswig realized a capital loss of $5M in 2007 and a capital gain of $79K in 2007. The Tax Court concluded that under ITA 111(1.1)(a)(i) the capital loss realized in the tax year is used first against capital gains in that year, before capital losses from previous years are utilized.
- The Tax Court concluded that Wuswig received a tax benefit from the avoidance transaction in 2007 and refered back to the conclusion that the series of transactions in 2007 was an avoidance transaction that was abusive of ITA 93(2) and ITA 93(2.01).

Wuswig Inc. v. The King (2025 TCC 147)

Decision and Analysis: 2007 Tax Year, Reduction of Capital Loss carryover

- The Tax Court considered whether the Minister can adjust a tax attribute if it does not increase amounts payable under the ITA, in a statute-barred year.
- The Tax Court relied on various court decisions, *New St James Limited* (66 DTC 5241), *Coastal Construction and Excavating Ltd* (97 DTC 27), *Papiers Cascades Cabano Inc.* (2005 TCC 396), *Leola Purdy, Sons Ltd* (2009 TCC 21), allowing tax attributes of a statute-barred year to be adjusted. TCC concluded that the Minister was able to issue a notice of determination under ITA 152(1.11), to adjust the 2007 capital loss carryover balance as it was not impacting the payable amounts for the statute-barred years.

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

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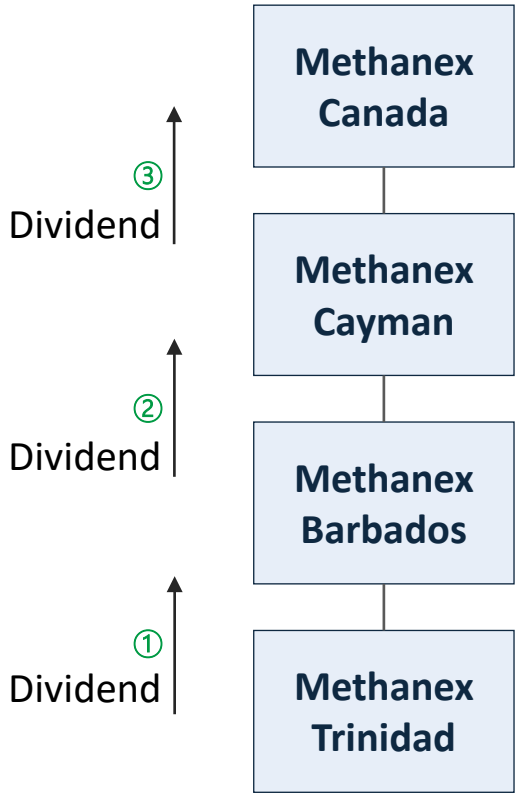
Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)



Facts

- Methanex Trinidad paid US$85 million of dividends (the "**Dividends**") to its sole shareholder, Methanex Barbados.
- Methanex Barbados in turn paid US$85 million of dividends to its sole shareholder, Methanex Cayman.
- Methanex Cayman used the dividend received from Methanex Barbados, together with dividends received from other subsidiaries, to pay for certain operating costs and pay a substantial dividend to Methanex Canada.
- No tax was withheld on the Dividends from Methanex Trinidad to Methanex Barbados, on the basis that Article 11 of the CARICOM tax treaty applied.

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Assessment

- The Trinidad & Tobago Board of Inland Revenue ("**BIR**") assessed Methanex Trinidad for failing to withhold tax on the Dividends.
- Relying on section 67 of the *Income Tax Act* (Trinidad), the BIR asserted that the Dividends were "fictitious" and "artificial" to the extent they were presented as dividends paid to Methanex Barbados. The Dividends were "in substance" paid to Methanex Canada and subject to a 5% withholding tax under Article 10(2)(a) of the Canada-Trinidad & Tobago tax treaty ("**Trinidad Treaty**").
- In the alternative, the BIR asserted that Methanex Barbados was not a resident of Barbados for purposes of the CARICOM tax treaty and, therefore, that the Dividends were not exempt from withholding tax under such treaty.

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

CARICOM Tax Treaty

- Not based on the OECD Model Tax Convention.
- A multilateral tax treaty among various states, including Trinidad & Tobago and Barbados.
- Although the CARICOM tax treaty differs in many ways from the OECD Model Tax Convention, the definition of "resident" in Article 4(1) of the CARICOM tax treaty is substantially identical to the OECD Model tax convention:

  > "For the purposes of this Agreement, the term "resident of a Member State" means any person who under the law of that State is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature".

- Under Article 11 of the CARICOM tax treaty, dividends paid by a resident of one member state to a resident of another member state are not subject to withholding tax.

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Tax Appeal Board and the Court of Appeal

- Tax Appeal Board found that Methanex Barbados was “liable to tax” in Barbados and, therefore, resident in Barbados for purposes of the CARICOM tax treaty.
- However, the Tax Appeal Board also found that the Dividends were “artificial and fictitious” such that the Dividends were considered to have been paid to Methanex Canada and subject to a 5% withholding tax rate under the Trinidad Treaty.
- The decision of the Tax Appeal Board was upheld by the Court of Appeal.

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Issues

- Did the Court of Appeal err in finding that the Dividends were “fictitious” and “artificial” within the meaning of section 67 of the *Income Tax Act* (Trinidad)?
- Was Methanex Barbados a resident of Barbados for purposes of the CARICOM tax treaty?

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Decision and Analysis: the Dividends were not "Fictitious"

- The fact that the Dividends were declared as part of a plan to repatriate cash to Canada did not render the Dividends "fictitious" (i.e., the transaction was not a "sham").

> "[T]he fact that a payment is made by A to B with the intention that it should be paid by B to C does not render fictitious the payment from A to B. This is all the more so where dividends are paid up a corporate chain with the intention that they should be received by the ultimate holding company. As counsel for the responded accepted, a company cannot lawfully declare and paid a divided directly to its ultimate holding company."

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Decision and Analysis: the Dividends were not "Artificial"

- The fact that Methanex Trinidad declared dividends at the request of Methanex Canada did not render the Dividends "artificial" (i.e., abnormal).

> "Far from being abnormal, the payment of dividends up a corporate chain at the request of the ultimate holding company is a commercial commonplace in national and international groups, no least because it is the only lawful means by which distributable profits can be brought up from subsidiaries."

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Decision and Analysis: Residence for Purposes of the CARICOM Tax Treaty

- A company resident in Barbados as a matter of Barbados domestic law can apply for a license to operate as an international business corporation ("**IBC**"), which is subject to lower rates of Barbadian income tax compared to non-IBC Barbados-resident corporations.
- The BIR argued that Methanex Barbados was not "liable to tax" in Barbados "by reason of residence" because it was not subject to the "full" rate of tax in Barbados. Instead, Methanex Barbados was "liable to tax" in Barbados by reason of being licensed as an IBC.
- First, the Privy Council rejected the BIR argument on the basis that to be granted a license to operate as an IBC, Methanex Barbados had to be resident in Barbados (a fact not in dispute).
- Second, the Privy Council adopted the decision in *Crown Forest* (95 DTC 5389), where the Supreme Court held that a corporation is resident in a jurisdiction if it is "liable to tax" on its worldwide income in that jurisdiction (i.e., the jurisdiction asserts the right to impose tax on worldwide income).

Methanex Trinidad (Titan) Unlimited v. The Board of Inland Revenue (2025 UKPC 20)

Decision and Analysis: Residence for Purposes of the CARICOM Tax Treaty

- Nothing in *Crown Forest* suggests that "full tax liability" means anything more than that the country in question asserts the right to tax a person on their worldwide income.
- In *Alta Energy*, the Supreme Court clarified that the "liable to tax" requirement "is not concerned with whether the person claiming benefits is in fact subject to taxation. Being liable to tax is better understood as being "liable to be liable to tax', meaning that taxes are a possibility, regardless of whether the person actually pays any" (at para. 54).
- Methanex Barbados was "liable to tax" in Barbados and, therefore, resident in Barbados for purposes of the CARICOM tax treaty.

CRA Views 2025-1055511C6 – Cash Pooling

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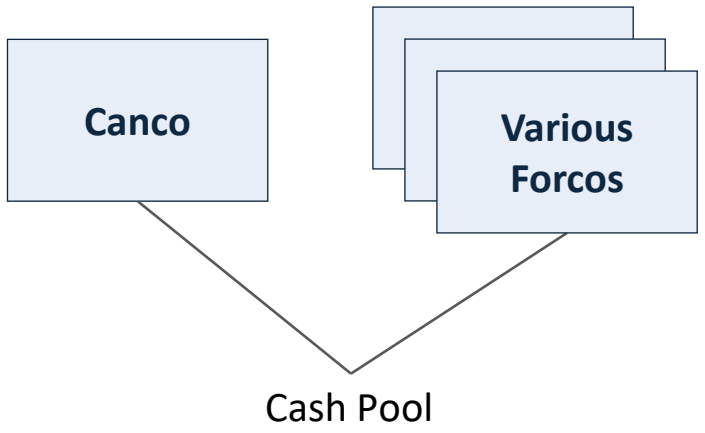
CRA Views 2025-1055511C6 – Cash Pooling



Question

- In a multinational notional cash pooling arrangement, there may be a number of participants in the pool and each participant's deposit or overdraft balance in the pool may fluctuate frequently.
- If a Canadian taxpayer is a participant and the conditions of ITA 15(2.16) are met, ITA 15(2.17) deems one or more loans to have been made to one or more non-resident participants for purposes of ITA 15 and 80.4.
- With frequent fluctuations in balances of all participants, ITA 15(2.17) may result various deemed loans subject to ITA 15(2). Are there any recent developments in the area of cash pooling that CRA can share?

CRA Views 2025-1055511C6 – Cash Pooling

Shareholder Debt and Deemed Dividends

- Where Canco has made a loan to its non-resident shareholder (or to a non-resident connected to the shareholder), ITA 15(2) and ITA 214(3)(a) deem Canco to have paid a dividend equal to the amount of the loan.
- The deemed dividend is subject to withholding tax under ITA 212(2).
- There are some exceptions to ITA 15(2) including ITA 15(2.6) and ITA (2.11).
  - Repayment of the amount within one year, other than as a "series of loans or other transactions and repayments"
  - Election to treat the loan as a "pertinent loan or indebtedness" (PLOI)

CRA Views 2025-1055511C6 – Cash Pooling

Back-to-Back Arrangements

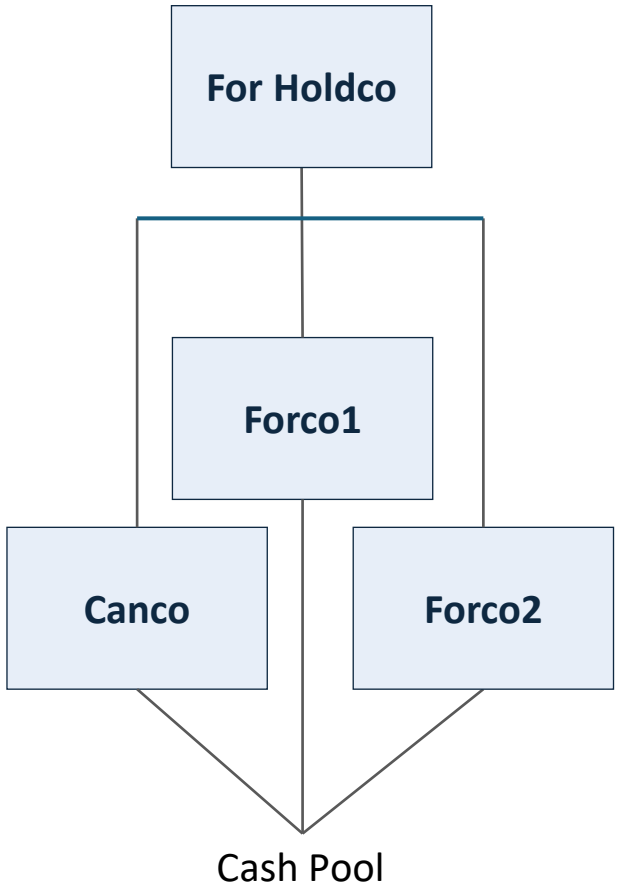
- Where all the conditions in ITA 15(2.16) are met, ITA 15(2.17) deems all or a portion of the amount owing to Canco to be a loan subject to ITA 15(2), that was made to the non-arm's length person.
- ITA 15(2.16) requires:
  - a person has a debt or obligation to pay Canco, ITA 15(2) would not otherwise apply;
  - Another non-arm's length person is in a funding arrangement that includes Canco and the above obligation; and either the non-arm's length person
    - has a debt or obligation owing to a person that has recourse under the funding arrangement, or reasonably only entered into due to the funding arrangement; or
    - has a specified right in respect of property granted by a person as required by the funding arrangement or reasonably the funding arrangement was entered into due to the granting of the right.
- CRA previous positions in CRA Views 2015-0595621C6 and CRA Views 2017-068263117, that ITA 15(2) could be applied to a cash pooling arrangement and that likely they would be considered part of a "series of loans and repayments"

CRA Views 2025-1055511C6 – Cash Pooling

Back-to-Back Arrangements

- Where ITA 15(2.17) has applied and conditions under ITA 15(2.18) are met, ITA 15(2.19) deems all or a portion of the amount of the loan to have been repaid.
- ITA 15(2.18) requires:
  - ITA 15(2.17) to have applied to a particular debt; and
  - At the particular time, either
    - An amount has been repaid in respect of that debt;
    - An amount has been repaid in respect of the debt owing by the non-arm's length person party to the funding arrangement; or
    - The specified right granted is extinguished or there is a decrease in the FMV of the property.

CRA Views 2025-1055511C6 – Cash Pooling



Application of ITA 15(2.16) - (2.19)

Hypothetical Cash Pooling Balances

	Forco1	Forco2	Canco	Net	ITA 15(2.16)/ 15(2.18)	ITA 15(2.17)/ 15(2.19)
Oct.1	$10M	$(5)M	-	$5M	n/a	-
Oct.5	$10M	$(5)M	$5M	$10M	no	-
Oct.15	$10M	$(15)M	$5M	-	yes	$5M
Oct.20	$15M	$(15)M	$5M	$5M	n/a	-
Oct.25	$15M	$(15)M	-	-	yes	$(5)M
Oct.26	$15M	$(15)M	$10M	$10M	no	
Oct.27	$10M	$(15)M	$10M	$5M	yes	$10M
Oct.28	$10M	$(10)M	$5M	$5M	yes	$(5)M
Oct.29	$10M	$(3)M	$5M	$12M	yes	$(2)M*

*$3M outstanding in respect of the Oct.27th ITA 15(2.17) loan

CRA Views 2025-1055511C6 – Cash Pooling

Other Exceptions - PLOI

- CRA has developed an alternative simplified PLOI Election under ITA 15(2.11) such that all amounts owing under the same legal instrument are elected as PLOI.
- Both methods utilize Form T1521 *Election for a PLOI under Subsection 15(2.11)*
- Election made under the simplified method applies for the duration of the period for which the taxpayer is a party to the arrangement.
- Deemed interest income arising from PLOI determined under ITA 17.1(1)
- CRA has provided guidance on how they determine imputed income computed in cash pooling:
  - Loan considered to arise on date first amount taxpayer advances into arrangement;
  - Balance owed to taxpayer at the end of each day will be amount owing for PLOI income calculation; and
  - Income reduced by actual interest for the year from the banking intermediary in respect of amount owed.

CRA Views 2025-1063771C6 – Computation of FAT

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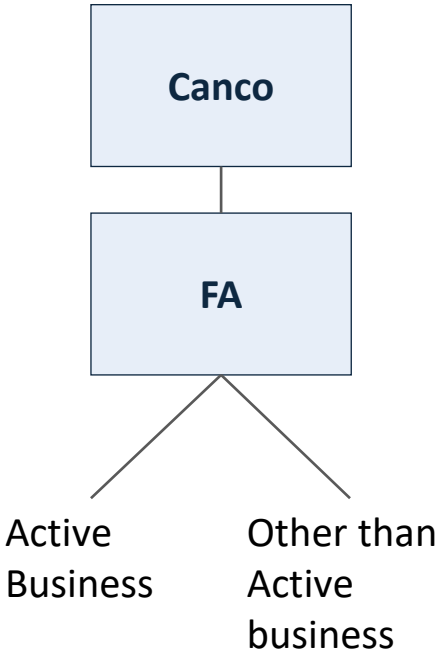
CRA Views 2025-1063771C6 – Computation of FAT



Question

- The definition of foreign accrual tax ("**FAT**") requires a determination of what portion of the foreign tax paid "may reasonably be regarded as applicable to" FAPI of FA.
- If a proration of foreign tax is required between the two streams of income, how should deductions available under the foreign tax law be allocated to make that proration?
- Would foreign deductible amounts be allocated to the two streams of income on the same basis regardless of whether they arose in the taxation years before FA became an FA of Canco or after?

CRA Views 2025-1063771C6 – Computation of FAT

Foreign Accrual Tax

- ITA 91(5) defines FAT applicable to amounts included under ITA 91(1), FAPI, generally as the portion of income or profits tax of the FA that may reasonably be regarded as applicable to that amount. However, FAT also includes any amounts prescribed by the Regulations.
- Determining FAT is necessary for computing the amounts deductible against a taxpayer's FAPI under ITA 91(4).
- The phrase "may reasonably be regarded as applicable to" contemplates a wide range of temporary and permanent differences between the computation of FAPI and foreign taxable income under foreign tax law.

CRA Views 2025-1063771C6 – Computation of FAT

Allocations of FAT between Income Streams

- CRA response that in this circumstance, it would be reasonable to multiply the foreign tax paid by the fraction that is the net income from FAPI activities over the total net income of the FA, both computed under foreign tax law.
- A formulaic approach provided for determining net income from FAPI activities for the tax year:

= A – B – D

A amount of gross income from FAPI business (computed under foreign tax law)

B amount of deductions allowed and claimed, reasonably regarded as directly applicable only to the FAPI Business

C amount of gross income from all sources subject to foreign tax

D total amount of deductions allowed and claimed, not directly applicable to either FAPI or other income-generating activities, **x A / C** [or allocated on some other reasonable grounds]

CRA Views 2025-1063771C6 – Computation of FAT

Allocations of FAT between Income Streams

- Foreign Tax X [net income from FAPI activities / total net income] = FAT
- Approach applies regardless of whether foreign tax deductions arose in tax year before it became a FA (e.g. loss carryforwards are allocated consistently with post acquisition amounts in determining B and D)

CRA Position

- The approach described is consistent with prior CRA statements in CRA Views 9719055 and CRA Views 2002-013420117.
- Taxpayer's may submit requests for Income Tax Rulings on a determination as to whether a different approach is viewed as reasonable by the CRA in those circumstances.

CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII

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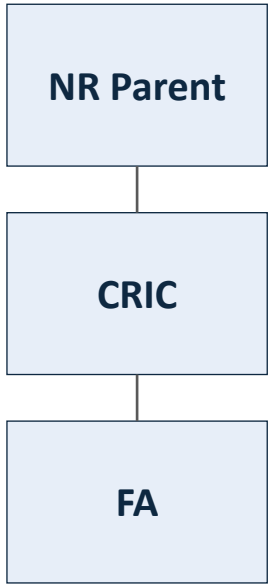
CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII



Question

- Whether an assessment of Part XIII tax under ITA 227(10) or 227(10.1) in respect of a deemed dividend under the FAD rules can be made in a situation where required information under ITA 212.3(7)(d)(i) is provided after its filing-due date. The late filing triggers ITA 227(6.2)(c), which deems the unpaid Part XIII tax liability on the resulting deemed dividend under ITA 212.3(7)(d)(ii) to have been paid.

CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII

FAD Rules and Part XIII Tax Liability

- ITA 212.3(2)(a) deemed the CRIC to have paid a dividend ("**Initial Dividend**") to its NR Parent.
- The CRIC was able to offset the Initial Dividend against the PUC of its shares held by the NR Parent as the requirements in ITA 212.3(7)(a)(i), (b)(i), or (c)(i) were met.
- The prescribed form ("**Form**") required by ITA 212.3(7)(d)(i) to report the offset was not submitted by the CRIC's filing due-date for that year. As a result, ITA 212.3(7)(d)(ii) deemed a dividend ("**Reduction Dividend**") to have been paid to the NR Parent on that filing due-date.
- The Reduction Dividend was liable to Part XIII tax under ITA 212(2), which the CRIC was liable to pay pursuant to ITA 215(1).
- The CRIC late-filed the Form and ITA 227(6.2)(c) deemed the Part XIII tax liability with respect to the Reduction Dividend to have been paid on that late-filing date, thereby eliminating the ITA 215(1) remittance obligation.

CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII

Payment of Arrears Interest

- ITA 227(8.3)(b) authorizes the Minister to assess interest on the Part XIII amount required to be withheld, beginning on the day on which the amount was required to be withheld and ending on the day that it is paid, or deemed paid, to the Receiver General.
- As a result of late-filing the Form, the CRIC was required to remit Part XIII tax under ITA 215(1). The Minister, therefore, may assess interest on the late remittance of any Part XIII tax required to be withheld from the resulting Reduction Dividend.
- Interest is computed beginning on the day on which the Part XIII tax would have been required to be remitted and ending on the day the Form is late-filed.
- "To clarify, any amount of interest payable as a result of the late remittance of tax required to be withheld and remitted is required to be paid to the Receiver General."

CRA Views 2024-1039701E5 – Subparagraph 212.3(7) and Part XIII

Assessment of Part XIII Tax

- The Minister may assess "at any time" an "amount payable" of Part XIII tax by a Canadian-resident person (ITA 227(10)) or by a non-resident person (ITA 227(10.1)). The "amount payable" refers to the full assessed amount of a liability, not just the unpaid balance.
- A deemed payment under ITA 227(6.2)(c) does not eliminate the Part XIII tax liability; rather, it causes it to be settled, or deemed paid, for purposes of Part XV of the ITA.

Position

- The Minister has discretion to make an assessment "at any time" of Part XIII tax under ITA 227(10) or 227(10.1) but is not required to do so. If a Part XIII tax liability has been settled by either actual or deemed remittance of tax withheld, the Minister may decide not to issue an assessment as there would be no unpaid balance owing and, therefore, nothing to collect.

Questions?

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