



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 066 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, December 12, 2016

—
Chair

The Honourable Wayne Easter

Standing Committee on Finance

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• (1530)

[English]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): I call the meeting to order. This meeting is called pursuant to the order of reference of Thursday, December 8, 2016, in regard to Bill S-4, an act to implement a convention and an arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and to amend an act in respect of a similar agreement.

With us we have Ms. Smith and Mr. McGowan, who we seem to see a fair bit of at this committee. Welcome, both of you.

If anybody has any questions on the bill generally, we can start with that or we can go to clause-by-clause consideration.

Pierre.

[Translation]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair, for giving me the opportunity to ask this question.

I asked it the last time we met the witnesses, but I am not sure I understand the meaning of subclause 4(2).

Can you explain why the bill must absolutely be retroactive to June 19, 2013? I know that June 19 is the effective date of the agreement with Hong Kong, but would there be a problem were we to proceed as we normally do, and have the legislation come into effect when it is passed and given royal assent?

[English]

The Chair: Mr. McGowan.

Mr. Trevor McGowan (Senior Legislative Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): Thank you for your question.

It has retroactive effect largely because it is a clarifying amendment. It does not seek to change substantively the bill. Rather, it clarifies the application of the Canada-Hong Kong treaty.

A number of factors are looked at when deciding whether a retroactive amendment is appropriate. In this case, as I've said, it's a clarifying amendment. It is not intended to be a substantive change. In addition, it is in every case relieving from the taxpayers' perspective for there to be a treaty. It's not a tightening change, so it would not have an adverse impact. Also, it is, as I said, not just clarifying; it codifies and puts into law how the Canada Revenue Agency and taxpayers have been treating the treaty since it was introduced.

The question of whether or not a convention or an agreement is a tax treaty arises most commonly in the context of outbound investment. That's typically where you have a Canadian multinational investing in a foreign subsidiary around the world. For investments in these subsidiaries, if they earn active business income, they can be returned or repatriated to Canada free of Canadian tax, provided they're paid out of exempt surplus and the country in which they're operating either has a tax treaty or a tax information exchange agreement. It is, for many taxpayers—Canadian multinationals operating abroad—very important to have a tax treaty.

The act itself contains numerous references to treaties, conventions, treaties with other countries, and so on. In some cases, they say “treaty” or “agreement”, but not in every single instance in the Income Tax Act. With the introduction of the Hong Kong treaty of a few years ago, the act was considered to work reasonably well.

The appropriate approach to interpreting any statute, but including a tax statute, is that you look at the text, context, and purpose of the words that you're reading to determine what their meaning is. In this instance, when you look at the text, and in particular with the context and purpose behind it, you can get to the answer of whether or not the Hong Kong treaty should be treated as a treaty, because clearly that was the intent.

This amendment, essentially following on what's being done with the Taiwan treaty, provides greater clarity for the actual text of the rules. So while on a textual, contextual, and purposive interpretation of the existing provisions of the act, we think you get to the right result, and it's agreed to by the Canada Revenue Agency's policy and also taxpayers, this clarifies the text so that it provides additional certainty.

As well, it does not raise any questions that might arise as to why you would have a special interpretive rule for Taiwan and not for, say, Hong Kong, when they're both, at least in certain respects, of the same nature. It's clarifying, it's relieving, in the sense that it does not adversely affect taxpayers, and it goes back to how the rule has been interpreted and applied since its introduction.

• (1535)

The Chair: Are there any further questions?

Mr. Grewal.

Mr. Raj Grewal (Brampton East, Lib.): I have a practical question. I was having a discussion on the plane last night. If a Canadian company is doing business in Taiwan and it pays taxes on its worldwide income and it pays in Canada, does it no longer have an obligation in Taiwan?

Mr. Trevor McGowan: I understand the question. Just to be precise, when you have a Canadian company carrying on business in Taiwan, do you mean directly through a branch and not through a foreign subsidiary?

Mr. Raj Grewal: Yes.

Ms. Stephanie Smith (Senior Chief, Tax Legislation Division, Tax Policy Branch, Department of Finance): What a treaty does would depend on the nature of what the company is doing in Taiwan, but if a Canadian company is operating in Taiwan and it hits the threshold of what is called the permanent establishment, which is set out in article 5, then the treaty sets out that yes, Taiwan would have a certain taxing right in respect of income that is sourced in Taiwan, so there would still be obligations in Taiwan and if, under the treaty, Taiwan has a certain obligation, then it would be Canada that would give a tax credit. However, if the activity in which it engages in Taiwan does not meet the threshold of a PE, permanent establishment, then it would have no obligations in Taiwan.

Mr. Raj Grewal: Okay. If it's through a foreign direct subsidiary, then how does it work? Then it would operate like a foreign direct subsidiary and would pay taxes in Taiwan and the headquarters would pay taxes in Canada? Then would the agreement not come into play at all?

Ms. Stephanie Smith: Depending on the nature of the relationship, the agreement would come into play. If it was a subsidiary corporation operating in Taiwan, then the agreement would come into play with respect to the transfer pricing of transactions between them, because the treaty provides that things must be priced at arm's length. That would come into play in determining the relative profits for any transactions between them. It would also come into play with regard to any payments between the two of them, like interest, royalties, or dividends, because one of the other advantages of the treaty is that it does generally reduce domestic withholding tax rates. The treaty would come into play in respect of those payments as well.

Mr. Raj Grewal: In a practical example, if I as an individual do business all over the world but I reside in Canada and I pay taxes in Canada but I have income from Taiwan, how would that work in this agreement? I didn't pay taxes on my Taiwanese income, but I declared it in Canada and paid tax on it. Under this agreement, would they have a claim on the income I generated in Taiwan?

• (1540)

Ms. Stephanie Smith: In general, there is nothing in the treaty that is going to give Canada or Taiwan any additional rights to tax income. Effectively it allocates those rights between the two jurisdictions. There are no taxing rights in the agreement itself. If there were no obligation taxwise with Taiwan prior to the treaty, this would not create any taxing rights for Taiwan in respect of a Canadian resident.

It does allocate who is able to tax that income and, again, depending on the level of activity being engaged in in Taiwan, it would or would not meet the threshold for a permanent establish-

ment. This ensures there is no double tax. Prior to a treaty, both Canada and Taiwan could have asserted taxing rights. Canada is the residence country; Taiwan is the source country. Then the taxpayer himself is in a situation of double tax to the extent that domestic laws through foreign tax credits do not fully credit the tax paid in a different jurisdiction. This ensures both cannot tax the same income.

Mr. Raj Grewal: Thank you.

If there's a difference in the tax rates, then under the agreement, can the other jurisdiction get the additional margin? Let's say, for argument's sake, that we're paying 10% here in Canada and it's only 5% in Taiwan but they choose Taiwan as their host country and Canada was the source. Then Canada loses out on 5% because they're saying that under the agreement they shouldn't be double taxed.

Ms. Stephanie Smith: Generally, for tax credits, you look at where a person is resident, and that's generally a factual determination as opposed to a pure choice. In certain cases, for payments of interest, dividends, and royalties from a source country, there is a cap on what the source country can tax at, and then you would get credit for that. However, if effectively it's a foreign tax credit, you would only give a credit up to and not exceeding what your own tax was. If the rate is 10% in Canada and 5% in Taiwan, and Taiwan is the residence country and is granting a foreign tax credit, it would only give a tax credit up to that 5%. It's not going to have to reimburse more Canadian tax.

In the reverse situation, if Canada is the residence and 5% tax was paid in Taiwan, assuming there's no cap on what we can tax, Canada would only give a credit of 5%.

Mr. Raj Grewal: Then you would still be on the hook for the additional 5% in Canada, right?

Ms. Stephanie Smith: That's correct.

Mr. Raj Grewal: Okay. Perfect.

Thank you.

The Chair: Is there any further discussion before we move to clause-by-clause consideration? Is everyone all settled?

There are no amendments. We'll skip the short title until we deal with the rest.

(Clauses 2 to 4 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall schedule 1 carry?

Some hon. members: Agreed.

The Chair: Shall schedule 2 carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: That's it. We don't need a reprint of the bill, because there are no changes.

Look at that: success in a hurry.

Thank you, Mr. McGowan and Ms. Smith, for your assistance.

Mr. Ron Liepert (Calgary Signal Hill, CPC): We should have all bills start in the Senate.

Voices: Oh, oh!

The Chair: Well, we could pass a motion to that effect, that all bills start in the Senate and get fixed up before they come here.

We'll suspend for a few minutes, and then we will go in camera to deal with business—

• (1545)

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): Mr. Chair, just before that, I have a notice of motion.

[*Translation*]

I would like to table the following notice of motion.

[*English*]

The Chair: We're going to deal with business. Do you want to...?

Mr. Gérard Deltell: I would like to table the motion here.

The Chair: Okay.

[*Translation*]

Mr. Gérard Deltell: The notice of motion reads as follows:

That the Standing Committee on Finance undertake a study on the new mortgage rules as introduced by the Minister of Finance on October 3, 2016, and that this be reported to the House.

[*English*]

The Chair: Yes. We accepted your.... I think you sent that in last week at some time, so it does have notice.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): So it's in order.

The Chair: It's in order, yes.

[*Translation*]

Mr. Steven MacKinnon (Gatineau, Lib.): Was there a notice of motion given at least 48 hours prior to this?

[*English*]

The Chair: Yes.

Do you want to debate this now, or do you want to go into committee business and deal with it?

Mr. Gérard Deltell: I think there's time for us to do it right now.

The Chair: Okay, then, we'll deal with it right now. We're still in public.

Mr. Deltell, do you want to explain your motion?

[*Translation*]

Mr. Gérard Deltell: With pleasure, Mr. Chair.

We know that last October 3, the Minister of Finance announced new measures regarding mortgage loans and the acquisition of residential property. These measures directly affect first-time purchasers, as well as anyone else who wishes to purchase a home. They may have positive effects, but they may also have effects that are concerning for buyers, banks and real estate brokers.

The measures announced by the Minister of Finance will thus have an impact on a large part of our economy. It would be appropriate, a few months down the road, to measure their impact, so that anyone involved in this area may have a say. Some people think this is an excellent idea, but others have some concerns.

All sectors of the economy are affected by these measures regarding home purchases. They affect thousands of Canadians at all levels of society, from the humblest among us to the better-off. Consequently we should look at this closely.

[*English*]

We don't want to interfere right now with the decision of the minister, but we are all concerned. I'm sure all of us have received some calls in our riding offices—I have in mine—because people want to know more about that and about the impact. Sometimes it's positive, sometimes it's negative, but I think as parliamentarians it's part of our duty, especially as the finance committee, to evaluate the pluses and minuses of any big decision, and as far as I'm concerned, this was a huge one tabled by the minister on October 3. To give Canadians the best knowledge, I hope and think it would be good to have this kind of hearing.

The Chair: I have on my list Mr. MacKinnon and Mr. Dusseault.

Mr. MacKinnon.

[*Translation*]

Mr. Steven MacKinnon: Thank you, Mr. Chair.

We are not opposed to what the member opposite has just suggested, but I want to point out that last June 14, 2016, the committee passed a motion introduced by Mr. McColeman. This was before the member joined the Standing Committee on Finance, and he may not be familiar with the motion, which reads as follows:

That the Standing Committee on Finance undertake a comprehensive study of issues surrounding the Canadian real estate market;

that the study focus on the impact of the housing market on the Canadian financial system and challenges surrounding access to residential home ownership; and

that the committee report on its findings and recommendations before the end of February, 2017.

And so I want to say—and I believe I speak for my colleagues—that I will be voting against our colleague's motion. If he wishes to study issues surrounding the residential real estate market and mortgage rules, all of this could be done in the course of the study we have already agreed to. We passed this motion, and the study must take place before the end of February.

That is the reason why I will oppose the motion. I invite him to withdraw it. He is probably in favour of his colleague's motion, which basically proposes that we study the same thing. The study he wishes to undertake can be done in that context.

• (1550)

[English]

The Chair: Pierre, you're next on the list, and then we'll go to Mr. Liepert, but the clerk has prepared a grid of all the motions and the work that is suggested before us, including Mr. Deltell's motion. We put that one on anyway because it had the 48-hour notice.

I'll ask her to hand this out so that people can review the total slate of things ahead of us. At this point in time, we are debating this motion that's on the floor, but we'll do this just so you have the information on what Mr. MacKinnon mentioned, which was the motion on housing by Mr. McColeman.

Pierre.

[Translation]

Mr. Pierre-Luc Dusseault: I will reserve my right to speak on that. Before forming an opinion, I would like to apprise myself of Mr. McColeman's motion and find out what the committee already adopted to study this issue.

[English]

The Chair: That's the second one down on the second page, in the English version anyway, Pierre, and it says "that the Study focus on the impact of the housing market".

Mr. Liepert.

You can take your time, if people want to glance through this first.

Mr. Steven MacKinnon: On a point of order, Mr. Chair, are we going to go in camera to discuss committee business?

The Chair: Well, this motion was moved in public, so we have to deal with it in public.

[Translation]

Mr. Gérard Deltell: Mr. Chair, I want to mention that the end of February 2017 will arrive very quickly. It will arrive too quickly for what we want to do. We are going to be gone for a month and so we are going to lose a month of committee work here. We have to give enough time to our analysts so that they can work but this only gives us three or four weeks to hear witnesses who might want to appear before the committee.

[English]

As far as I'm concerned, it's a little bit too tight for February 2017. This is why I think my motion is more open to that. We don't have a timetable, but we can do it as well as we can.

The Chair: Mr. Liepert.

Mr. Ron Liepert: I want to make a comment relative to Mr. MacKinnon's comments. Obviously, the announcement by the finance minister that my colleague is referencing was after this committee agreed to the motion that we've already adopted, which does not make any reference to the finance minister's announcement. If we do the study that we are required to do, I would concur with my colleague that we haven't left ourselves very much time here.

I don't want to be in a position where the members of the finance committee from the government side can use the excuse that it wasn't part of the original motion and therefore we can't talk about the finance minister's announcement. I would like to get a little

clarification from a member of the government side, such that if in fact they defeat this motion, there's going to be a commitment that the finance minister's announcement, which happened after the approval of the original motion, can be discussed as part of the one we have to study.

The Chair: From the government side, Mr. MacKinnon.

[Translation]

Mr. Steven MacKinnon: Mr. Chair, the motion from Mr. McColeman and his party asks that we: "[...] undertake a comprehensive study of issues surrounding the Canadian real estate market".

Since the committee is master of its proceedings, in my opinion this in no way limits the scope of the study. We will decide on the scope of the study in question.

• (1555)

Mr. Gérard Deltell: Mr. Chair, as Mr. Liepert said quite rightly, this was mentioned before the October 3 announcement, which had a major impact on the motion. Through this announcement the minister indeed made a very important change.

Could we find some ground for agreement between that motion and the one we are submitting today? We could focus more on the October 3 announcement and set aside the February 2017 deadline.

[English]

The Chair: Mr. Dusseault.

[Translation]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

I tried to absorb all of that and form an opinion on the issue.

My colleague's motion very specifically focuses on the new rules proposed by the Minister of Finance, whereas the June 14, 2016, motion is broader and would allow for a much more detailed, uncircumscribed discussion on the mortgage regulations surrounding the Canadian real estate market. I would have liked to look at both to some degree and so I am ambivalent.

To help me, perhaps the clerk could give me some explanations about the February 2017 date. If the committee wishes to continue its work beyond that date, it will not really be bound by it, correct?

[English]

The Chair: The simple answer, Pierre, is that the committee is master of its own destiny. If it wants to drop the study, it can. If it wants to extend the deadline, it can. If it wants to add to it, it can.

Mr. MacKinnon.

[Translation]

Mr. Steven MacKinnon: We can quite simply vote.

[English]

The Chair: Are we ready for the question?

(Motion negated)

The Chair: Can we suspend and move in camera to deal with all the business on the agenda here?

[*Translation*]

Mr. Gérard Deltell: Mr. Chair, in French we refer to a directive. My purpose is not to find out how this is said in English, but simply to point out that we are talking about a directive.

What will we do with Mr. McColeman's motion, which asks that "the committee report on its findings and recommendations before the end of February 2017?"

[*English*]

The Chair: We have quite a number of proposals outlined on the grid. We need to decide how we want to start. I think we're starting on January 30. Do we want to start with that housing study or whatever? That's what we want to figure out.

We'll suspend to go in camera to deal with these, and try to lay out our schedule for the first couple of months.

[*Proceedings continue in camera*]

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