

### ISSUES

- Is 1a ' #ta! 9a#n taxa7le under do Countr8 AE
- Is 1a ' #ta! 9a#n exe\$ ' t fro\$ do\$est#1 tax under Art#1le : \*(4+ of Countr8 AF; uxe\$ 7our9 treat8E GAAR a' ' 8E
- se rule #n t6e treat8E

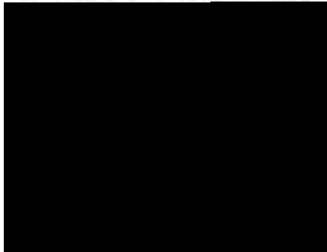
### DECISION

Ta- Court of Canada #eld:

- Ca ' #ta! 9a#n #s exe\$ ' t under A treat8
- GAAR does not a' ' 8
- H No a?eidan1e transa1#on on t6e e?#den1e
- xe\$ 7our9 <as ' r# \$ ar#8 to
- #n#n9 o' erat#ons+
- e : \*(4+ lsele1#on of a treat8 to
- o<n 1annot 7e ?#e<ed as

---

Article :\*(4+( CanadaF;uxe \$



---

ANA;YSIS: Do\$est#1 ;a<

, Is 1a' #ta\ 9a#n taxa7le under Co  
do\$est#1 la<E

H Does Countr8 A # \$ ' ose tax on 9a  
dis' osal of # \$ \$ o? a7le ' ro' ert8 situated #n Countr8  
AE

ose tax on dis' osal of s6ares #n  
?e t6er ?alue fro \$ # \$ \$ o? a7le

## Tax 'a8er'is Ar9u\$ents

- , Tax 'a8er re#ies on Art#1#ies : \*(4
- , K6at #s t6e o7-e1t and 'ur' ose
- and (A+E
- , Does t6e trans1#on frustrate or defeat t6e

\*(4+E

:)

## Tax 'a8er'is Ar9u\$ents

- , - l; <as res#dent of ; uxe \$7ou
- ; uxe \$7our9 la< and under Art
- , Treat8 does not 1onta#n an8 #
- 7enef#ts ' ro?#s#on or 9enera# ant#Fa7use rule

nta#n an8 #n6erent ant#Fa7use  
n1e 't #s on#8 'oss#7#e #f 7ot6

:G

## Tax 'a8er'is Ar9u\$ents

- , Pur' ose of Art#1#ies : \*(4+ and (A
- sour1e 1ountr8 to tax 9a#ns fro\$
- su7stant#al #nterests #n 1o\$ ' an
- su7stant#al #nterest #s : 5 or \$ore
- On# res#dent 1ountr8 1an tax t6e 9a#n under
- ns #s #n a11ordan1e <#t6 t6e

:3

## Government's Arguments

- , Taxpayer argued; use of source to get treaty benefits
- , Residence clause argued that before disposal

... as not a real estate  
... and is not entitled to the  
8

21

## Government's Arguments

- , Article 1(4) and (A) do not include article 1(a) transactions to tax payer's interest to less than
- , Transaction clause but in no case tax

... to deny treaty benefits

22

## Government's Arguments

- , No conflict between Country A's treaty
- , Based on explicit state entity in the  
Contract on Article 1:

... to the interpretation  
into 7 before 2 \*

23

## Government's Arguments

- , If the GAAR does not apply (1a)  
interpreted to deny treaty benefits
- , Paragraph 6.3.A:  
This is one of the purposes of the transaction to get treaty  
benefits and

... frustrate purposes of treaty

24

## Treaty Override

, So the countries ex 'treaty' provisions  
do not apply at the GAAR 'rule'  
'provisions of tax treaties in order  
to courts from 1999 treaty relief  
So the countries cannot use do not apply to

2A

Thank you