Federal Court of Appeal | Cour d'appel fédérale

Date: 20100105

Dockets: A-114-09
A-113-09

Citation: 2010 FCA 1

CORAM: **BLAIS C.J.**
NOËL J.A.
LAYDEN-STEVENSON J.A.

BETWEEN:

EXXONMOBIL CANADA LTD. AND
EXXONMOBIL CANADA RESOURCES COMPANY
O/A EXXONMOBIL CANADA PROPERTIES PARTNERSHIP

Appellants

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 2, 2009.

Judgment delivered at Ottawa, Ontario, on January 5, 2010.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: BLAIS C.J.
LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] These are two appeals brought by ExxonMobil Canada Ltd. and ExxonMobil Canada Resources Company O/A ExxonMobil Canada Properties Partnership (the appellants) against decisions of Little J. of the Tax Court of Canada (the Tax Court Judge) holding, on the basis of common evidence, that the appellants were not entitled to input tax credits (ITCs) claimed pursuant

to section 174 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the ETA) with respect to moving allowances paid to their employees.

[2] The Tax Court Judge held that although the ITCs claimed by the appellants relate to allowances within the meaning of section 174, they are barred by the operation of paragraph 170(1)(*b*) of the ETA since the allowances in question were intended for "the exclusive personal use or consumption" of the employees. He further held that the allowances did not meet the reasonability requirement set out in subsection 170(2).

[3] The appellants maintain that in so holding, the Tax Court Judge committed a legal error in failing to recognize that paragraph 170(1)(*b*) and subsection 170(2) cannot apply in circumstances where section 174 applies.

[4] The two appeals were consolidated by order of this Court dated April 28, 2009. Consistent with this order, these reasons will be filed in the lead file (A-114-09) and a copy thereof will be filed as Reasons for Judgment in file A-113-09.

STATUTORY PROVISIONS

[5] The statutory provisions relevant to the disposition of the appeals are set out in Appendix A to these reasons.

THE FACTS

[6] The relevant facts are set out in an Agreed Statement of Facts which is reproduced in full in the reasons of the Tax Court Judge (2009 TCC 25). It suffices for present purposes to provide a brief summary.

[7] The appellants carry on business in the oil and gas industry. Domestically, their business extends to nearly every province and territory in Canada. As part of their business, the appellants are required to relocate their employees to different locations across the country, some of which are remote. There is no issue that the ongoing relocation of employees, particularly skilled professionals, is an essential component of the appellants' business operations and that the relocation policy adopted by the appellants was intended to facilitate employee transfers by allowing such transfers to take place with minimal disruption to the employees (Appeal Book, Vol. II, pp. 286 and 287; Transcript of Evidence, Appeal Book, Vol. I, pp. 154, 218 to 226).

[8] According to this relocation policy, the appellants, in addition to paying and/or reimbursing direct moving expenses incurred by relocated employees, paid the employees a moving allowance of up to a maximum of 15% of their salary. The moving allowance was intended to compensate relocated employees for incidental expenses related to the move that were not reimbursable as moving expenses.

[9] The appellants suggest, and the respondent accepts, that such expenses would include for example: "draperies, blinds and carpeting for the new premises; removal and installation of lighting

fixtures; disconnection and reconnection of utilities (e.g., hydro, water, and gas), computers, antennae and satellite dishes; penalties for early cancellation of service contracts (e.g., cell phones, pagers, home security systems, Internet service providers), initial house cleaning, redirection of mail, the cost of registering vehicles or obtaining licenses in a new province; children's school uniforms and books; disassembly and reassembly of items for shipment; replacement of items that cannot be shipped (e.g., dangerous goods, frozen goods, plants); and additional insurance costs for valuable items shipped" (Notices of Appeal, Appeal Book, Vol. I, pp 41 and 51, para. 8; Replies to the Notices of Appeal, Appeal Book, Vol. I, pp 62 and 75, para 5c)).

[10] With the exception of the first $650 of the allowances paid (with respect to which the actual use of the funds had to be demonstrated on request) the relocated employees could use the allowance as they pleased and were not required to produce receipts. As such, the allowances were at the complete discretion of the employees, and therefore taxable as a benefit from employment pursuant to paragraph 6(1)(*b*) of the *Income Tax Act*, R.S.C, 1985, c. 1 (5th Supp.) (the ITA). As a result, the part of the moving allowance above $650 was included by the appellants in the relocated employee's T-4 statement.

[11] The appellants obtained the ITCs claimed on all payments and/or reimbursements by them of direct, actual moving expenses incurred by the employees who receive the allowances, including the first $650 of the allowance for which the employee had to be in a position to show actual use. Only the discretionary portion of the allowance is at issue in these appeals.

[12] The total amount of ITCs claimed by the appellants with respect to the moving allowances, exclusive of the first $650, was $122,443.13 (Agreed Statement of Facts, paras 16 and 29). These ITCs related to moving allowances paid from 1998 throughout 2002 (Appeal Book, Vol. II, pp. 511 and 580 to 582).

[13] The appellants deducted the allowances in computing their income pursuant to the relevant provisions of the ITA. Although this is not reflected by the pleadings, the respondent admitted during the hearing that it does not take issue with the propriety of these deductions.

[14] The Minister of National Revenue (the Minister) denied the claimed ITCs. At the assessment stage, the Minister took the position that the moving allowances were not reasonable within the meaning of paragraph 174(*c*) of the ETA (Replies to the Notices of Appeal, para. 24, Appeal Book, Vol. I, pp. 68, 81 and 82). Before the Tax Court, the Attorney General, on behalf of the Minister further asserted that paragraph 170(*b*) of the ETA applied to deny the ITCs claimed by the appellants (Replies to the Notices of Appeal, para. 27, Appeal Book, Vol. I, pp. 69 and 82).

DECISION OF THE TAX COURT

[15] The Tax Court Judge first notes the difference between an “allowance” and a “reimbursement”. He then finds that the payments in issue bear the legal characteristics of an allowance (Reasons, para. 23).

[16] The Tax Court Judge then rejects the appellants' contention that section 174, which deals specifically with allowances, is dispositive. According to the Tax Court Judge, section 174 "simply places the appellants in the shoes of the employees" (Reasons, para. 25). The Tax Court Judge recognizes that under section 174, the appellants [are deemed to have] paid the GST (Reasons, para. 27). However, in his view the application of section 174 does not preclude the application of sections 169 and 170 (*ibidem*).

[17] The Tax Court Judge notes that pursuant to paragraph 170(1)(*b*), no ITCs may be claimed in respect of any supply acquired by an employer for the exclusive personal use or consumption of an employee, if a taxable benefit ensues under the ITA. As a taxable benefit did ensue in the present case (because the allowances are taxable), the Tax Court Judge holds that paragraph 170(1)(*b*) applies to deny the ITCs claimed by the appellants (Reasons, para. 28).

[18] In any event, he finds that the allowances were not "reasonable" within the meaning of subsection 170(2) of the ETA (Reasons, para. 30) as no evidence was adduced to prove they were based on the distance of the move, the number of family members or any other relevant fact. According to the Tax Court Judge, "the arbitrary provision of the allowances, based on the employees' annual salary was unreasonable under subsection 170(2) …" (Reasons, para. 31).

[19] The Tax Court Judge then notes the decision of Campbell J. in *3859681 Canada Inc. v. The Queen*, 2003 TCC 501 (*Zellers*) who held that *Zellers* was entitled to ITCs on moving allowances paid in circumstances that are identical to those here in issue. However, the Tax Court Judge

distinguishes *Zellers* because in that case the parties agreed that the allowances were reasonable, and for "all or substantially all" taxable supplies (Reasons, paras 33 and 34(1) and (2)). In any event, the Tax Court Judge notes that *Zellers* is not a binding precedent since it was decided pursuant to the informal procedure (Reasons, para. 34(3)).

[20] Finally, the Tax Court Judge refers to CRA's policy P-075R according to which a moving allowance, which is required to be included in income as a taxable benefit, does not give rise to an entitlement to ITCs pursuant to section 174 of the ETA. The Tax Court Judge also refers to a comment in *Canada GST Service, C3,* to the same effect, which he attributes to David Sherman (Reasons, para. 35) [Mr. Sherman has since indicated that the comment in question reflects CRA's views rather than his own (see GST Case Notes, No. 164, May 2009, Carswell, at p. 8)].

POSITION OF THE PARTIES

[21] In support of their appeal, the appellants maintain that the Tax Court Judge, having found that the payments made were "allowances" within the meaning of section 174 of the ETA, was bound to apply this provision. In their view, the Tax Court Judge erred in law by importing into section 174 the requirement set out in paragraph 170(1)(*b*). He further erred in applying the reasonability test set out in subsection 170(2) rather than the one provided for with respect to allowances in paragraph 174(*b*).

[22] The respondent Crown supports the conclusion reached by the Tax Court Judge. It contends that the Tax Court Judge properly rejected the appellants' contention that section 174 was

dispositive. Applying section 174 without regard to the requirement set out in paragraph 170(1)(*b*) would give rise to an absurd result. The respondent further contends that the Tax Court Judge properly applied subsection 170(2) in assessing the reasonability of the allowances.

[23] In any event, the Tax Court Judge found that the allowances were not intended to fund the acquisition of taxable supplies, with the result that an essential requirement for the operation of section 174 is missing. The respondent submits that the appeals can and should be summarily dismissed on this basis.

ANALYSIS AND DECISION

Preliminary contention

[24] In support of its submission that the appeals should be dismissed summarily, the respondent points out that section 174 only applies if the supplies of property or services which the allowances are intended to fund are "all or substantially all … taxable supplies (other than zero-rated supplies)" ("… dont la totalité, ou presque, sont des fournitures taxables, sauf des fournitures détaxées …") (subparagraph 174(*a*)(i)). According to the respondent, it has not been shown that the Tax Court Judge made a palpable or overriding error in finding that this condition was not met (Memorandum of the respondent, para. 11).

[25] However, a review of the reasons shows that the Tax Court Judge made no such finding. The only statement made by the Tax Court Judge that relates to this issue is found at paragraph 34

of his reasons where he states that *Zellers* can be distinguished on three grounds, the second being that:

> In *Zellers* the parties agreed that the allowance was for "all or substantially all" taxable supplies. In the present appeal, Counsel for the Minister argued that the appellants were not entitled to claim ITCs as the allowance is not for supplies that are all or substantially all taxable supplies.

Beyond noting this distinction, the Tax Court Judge makes no finding as to whether the allowances in this case were for "all or substantial all" taxable supplies. Indeed, there was no need to do so given his earlier conclusion that the conditions set out in paragraph 170(1)(*b*) and subsection 170(2) were applicable and had not been met.

[26] The Minister in assessing the appellants did not assume that the supplies were not taxable supplies or were zero-rated. The argument was raised for the first time in the Replies to the Notices of Appeal. The evidence on this narrow point is that the allowances were intended to compensate relocated employees for incidental expenses related to their move, other than reimbursable moving expenses. A list of the expenses contemplated by the allowances was set out in the Notices of Appeal (see paragraph 9, above).

[27] The respondent submits that amongst the items listed, four would be tax exempt and one would be zero-rated (e.g., registering vehicles and obtaining new drivers license in another province, connecting to a water distribution system, acquiring additional insurance for valuable items shipped, replacing frozen food).

[28] In my respectful view, this does not establish that the contemplated property or services are not “all or substantially all” taxable supplies. First, as the appellants point out, the items that would be tax exempt or zero-rated are low ticket items. More importantly, the list provided by the appellants is not exhaustive (the respective Notices of Appeal state: “Examples of such expenses include: etc.”). Amongst the immense variety of supplies which the allowances are potentially aimed at, the fact that four are tax exempt and one is zero-rated, does not establish that the “all or substantially all” requirement has not been met.

[29] I therefore reject the respondent’s preliminary contention for denying the appeals.

Question in issue

[30] The main issue which calls for resolution is one of statutory construction: does the requirement set out in paragraph 170(1)(*b*) apply to a claim for ITCs made pursuant to section 174? The Tax Court Judge answered this question in the affirmative. Given the nature of this question, the Tax Court Judge had to come to the correct conclusion on this point.

[31] In reaching his conclusion, the Tax Court Judge recognized that the amounts paid by the appellants to their employees were “allowances” rather than “reimbursements” for purposes of the ETA (Reasons, para. 21) and therefore subject to the application of section 174. However he held, based on paragraph 170(1)(*b*), that since the allowances gave rise to a taxable benefit in the hands of the employees, no ITCs could be claimed by the appellants under section 174.

[32] The gist of the Tax Court Judge's reasoning is set out at paragraph 28 of his reasons:

> Section 169 determines who is eligible to claim ITCs. However, it is stated in section 169 that it is expressly subject to other provisions of Part IX of the ETA. One of these provisions is found in paragraph 170(1)(*b*) of the ETA. Paragraph 170(1)(*b*) provides that no ITCs may be claimed in respect of any supply acquired for the exclusive personal use or consumption of an employee unless there would have been no taxable benefit and that the employee had paid nothing for the benefit. In this situation the portion of the moving allowance over $650 was a taxable benefit. It therefore follows that paragraph 170(1)(*b*) applies to deny the ITCs that were claimed by the Appellants.
>
> [My emphasis]

[33] This reasoning would in effect read section 174 out of the ETA. Section 174 is premised on the payment of an "allowance" which has the same meaning under both the ETA and the ITA, i.e., a predetermined amount paid for a certain purpose in circumstances where the use of the amount remains at the complete discretion of the recipient and there is no requirement to account (as to the ITA, see *Canada. v. Pascoe*, 1975 CTC 656 at paragraph 7; as to the ETA, see CRA policy P-075-06). Under paragraph 6(1)(*b*) of the ITA, an allowance paid by an employer, whether to fund personal or living expenses "or for any other purpose", is always treated as income in the hands of the employee (subject to the exceptions stated in subparagraph 6(1)(*b*)(i) to (ix) (see Appendix A), none of which are relevant to the analysis). It follows that the fact that an allowance is taxable under the ITA cannot in and of itself rule out the application of section 174. It is trite that Parliament cannot be presumed to speak for nothing.

[34] The respondent appears to recognize as much. It submits that paragraph 170(1)(*b*) should not be construed as ruling out all allowances, but only those which are destined to fund the

acquisition of property intended “exclusively for the personal consumption, use or enjoyment” of an employee (i.e., the “benefit”) within the meaning of paragraph 170(1)(*b*) (Memorandum of the respondent, para. 31).

[35] The respondent reasons that in enacting this requirement, Parliament was obviously of the view that no ITCs should be available to the employer with respect to property acquired by the employer and provided to employees exclusively for their personal consumption, use or enjoyment. If no ITCs are to be allowed with respect to such property when provided directly by the employer, why should the employer be able to claim ITCs when paying an allowance that is intended to fund the acquisition of the identical property. Relying on this reasoning, the respondent contends that ITCs should be available with respect to allowances aimed at funding such things as travel allowances (when travel is for business purposes) or office supplies, but not supplies that are intended for the exclusive personal use and enjoyment of the employees such as rugs, draperies and the like (*ibidem*).

Construction of section 174 of the ETA

[36] As all statutory provisions, section 174 must be construed in its entire context, the words thereof given their grammatical and ordinary sense harmoniously with the scheme of the ETA, the object of the ETA, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21).

[37] Subsection 169(1) which sets out the eligibility requirements for claiming ITCs begins with the words “[s]ubject to this part, ...”. Both section 170 and section 174 fall under Part IX of the ETA. These provisions deal with the entitlement to claim ITCs in distinct but related situations. Section 170 deals with ITCs that may be claimed with respect to benefits in kind provided to employees and section 174 deals with ITCs that may be claimed with respect to allowances paid to employees.

[38] Paragraph 170(1)(*b*) provides that no ITCs may be claimed with respect to property or services acquired “exclusively for the personal consumption, use or enjoyment” of an employee (the benefit), unless the employee has paid adequate consideration or the benefit does not otherwise result in an income inclusion pursuant to section 6 of the ITA (i.e., it is not a taxable benefit). Paragraph 170(2)(*a*) further requires that “the consumption or use of the property or services of such quality, nature or costs [be] reasonable in the circumstances, having regard to the nature of the commercial activities of the registrant; …”.

[39] Section 174 deals with a person’s entitlement to ITCs with respect to allowances paid to employees to fund the supply of identifiable property or services. Subparagraph 174(a)(iv) was drafted on the assumption that the employees have “acquired” the property or services contemplated by the employer in paying the allowance (although as we have seen there can never be any certainty in this regard) and the only requirement as to the type of property or services is that they be “in relation to activities engaged in by [the employer]”.

[40] The other relevant requirement for our purposes is aimed at insuring that the allowances are reasonable. In this respect, paragraph 174(*b*) imports into the ETA the conditions for recognizing an expense in the computation of a taxpayer's profit under section 9 of the ITA, including the requirement that the amount be incurred for the purpose of gaining or producing income (para. 18(1)(*a*) of the ITA), and that the amount claimed be "reasonable in the circumstances" (section 67 of the ITA).

[41] Paragraph 174(*c*) also requires that where an allowance comes within subparagraphs 6(1)(*b*)(v), (vi), (vii) or (vii.1) of the ITA, it must be reasonable for the purpose contemplated. Although the respondent did rely on this provision when issuing the assessments, it now concedes that it has no application since none of the relevant provisions of the ITA are applicable on the facts of this case.

[42] When the conditions set out in section 174 of the ETA are met, the employer is deemed to have received a supply of the property or services for which the allowance was paid; any consumption or use of the property or services by the employee is deemed to be that of the employer; and the employer is deemed to have paid, at the time when the allowance was paid, tax of an amount determined by the formula set out in paragraph 174(*f*).

[43] Although sections 170 and 174 deal with situations that can be seen as analogous, it seems clear from the distinct schemes under which they operate, that they were intended to apply separately by reference to their own conditions. It follows in my view that the requirements set out

in section 170 do not apply to a claim made pursuant to section 174 any more than the requirements set out in section 174 could apply to a claim made pursuant to section 170. This does not mean however that these provisions ought to be construed in isolation or without regard to one another.

[44] In this respect, the position of the respondent evolved during the course of the hearing. As I understood counsel, she no longer contends that the requirement set out in paragraph 170(1)(*b*) applies to a claim made pursuant to section 174, as held by the Tax Court Judge. Rather she maintains that section 174 can, and should be construed in a manner that is consistent with paragraph 170(1)(*b*).

[45] In support of her position that these provisions can be read harmoniously, counsel drew our attention to the specific wording of subparagraph 174(*a*)(iv) and insisted that what must be "in relation to the activities" of the employer pursuant to this provision are the supplies of property and services which the allowance is intended to fund, and not the allowance itself. The relevant words are as follows:

174. For the purposes of this Part, where	**174.** Pour l'application de la présente partie, […]
(*a*) a person pays an allowance	*a*) la personne verse une indemnité,
…	[…] :
for	
(iv) supplies … of property or services acquired … by the employee, … in relation to activities engaged in by the person,	(i) […] pour des fournitures […], de biens ou de services que le salarié, […] a acquis […] relativement à des activités qu'elle exerce,

… […]

[My emphasis]

[46] The distinction is significant. Although there is no doubt that the allowances in this case relate to the activities of the appellants given their purpose (i.e., facilitating the ongoing relocation of their employees), the same cannot be said about the property or services which the allowances were intended to fund.

[47] Relying on this distinction, the respondent submits that the property or services contemplated by the allowances, such as carpets, rugs, house cleaning services etc. which are intended for the exclusive personal use of the employees, do not relate to the appellants' activities and therefore do not qualify. On the other hand, allowances for supplies of property or services that are in relation to the activities of the employer such as travel allowances and office supplies would qualify.

[48] In *Zellers*, the distinction which counsel for the respondent now urges upon us was brought to the attention of the Court as evidenced by the following passage (*Zellers*, para. 6):

> … the respondent argued that there must be a relation or connection test which would directly connect the supply for which the tax is paid to the commercial or business activities of Zellers. Respondent argued that items such as internet hook up, cable connection or window dressings are clearly not related to Zellers' business activities but are for the exclusive personal use and enjoyment of the relocated employees of Zellers. …

However, the Court in *Zellers* did not confront this argument. The issue is not discussed and the conclusion reached is that the relationship test was met on the sole basis that the allowances were in relation to the activities in which Zellers was engaged (*Zellers*, paras 16, 17 and 18).

[49] Confronted with this argument, counsel for the appellants insisted on the fact that the words "in relation to" have the widest possible ambit. He argued in effect that since the allowances in issue are in relation to the activities of the appellants, the property or services which they are intended to fund also meet this requirement (see also Memorandum of the appellants, para. 50). I respectfully disagree.

[50] In my view, the fact that an allowance is in relation to the activities of the employer (and deductible pursuant to the ITA), does not necessarily mean that the supplies of property or services which it is intended to fund meet this requirement. If meaning is to be given to the words of subparagraph 174(*a*)(iv), regard must be had to the particular property or services contemplated and their intended use. Applying these criteria, property or services which are intended by the employer for the exclusive personal use of the employees and which lend themselves to such a use bear no relationship with the employer's activities. In contrast, property or services which can be used by the employees in the course of their employment activities, and which are intended for such a use, are in relation to the employer's activities.

[51] This reasoning gives effect to the words used by Parliament in framing the entitlement to ITCs with respect to allowances. It also provides for a result that is consistent with an employer's

entitlement to ITCs pursuant to section 170 when the same property or services are acquired directly by the employer and provided to the employees. The Explanatory Notes to Bill C-62, as passed on April 10, 1990, indicate that section 174 was intended to be so limited (Explanatory Notes, p. 63):

> Section 174 Travel and other allowances
>
> This section deals with allowances paid by a person to employees for expenses incurred in Canada for supplies all or substantially all of which are taxable (such as travel expenses). To the extent that the allowance is (or would be) deductible in computing the income of the person for a taxation year for the purpose of the *Income Tax* Act, the person is treated as having received a taxable supply and to have paid, at the time the allowance is paid, GST in respect of the supply equal to 7/107ths of the allowance. The effect is to permit the employer to recover by way of an input tax credit the GST paid by the employee on expenses which, if incurred directly by the employer, would be recoverable as input tax credits. The same rule applies where the registrant is a partnership with respect to allowances paid to members of the partnership.
>
> [My emphasis]

This view was reiterated seven years later in the Technical Notes issued by the Department of Finance in July 1997, when the last amendment to section 174 was made (Technical Notes, p. 269):

> … [s]ection 174 was enacted to enable an employer to claim ITCs in respect of allowances paid for certain expenses to the same extent as would have been the case if the person had incurred the expense directly. Section 174 is amended to achieve this result more directly by deeming, in new paragraph 174(*e*), the use of the property or service by the employee … to be that of the employer … New paragraph 174(*f*) is added to clarify that the time at which the person is considered to have paid tax in respect of the supply is the time at which the allowance is paid.
>
> [My emphasis]

Although not determinative, these passages provide a compelling indication of parliamentary intent and, to the extent that the words of subparagraph 174(*a*)(iv) can be read in a manner which achieves this intent, effect must be given to them.

[52] I therefore conclude that the requirement set out in subparagraph 174(*a*)(iv) was not met on the facts of this case given that the supplies of property or services which the allowances were intended to fund (as they appear in the respective Notices of Appeal) were for the exclusive personal use of the employees and therefore do not relate to the appellants' activities. It follows that I agree with the Tax Court Judge that there was no entitlement to ITCs pursuant to section 174, but for reasons different from those which he gave.

In any event, was the allowance reasonable?

[53] Relying on his view that the requirements of section 170 are applicable to a claim made pursuant to section 174, the Tax Court Judge went on to hold that the reasonability test set out in subsection 170(2) had not been met. For the reasons already given and those which follow, it was not open to the Tax Court Judge to disallow the claim by reference to requirements other than those set out in section 174.

[54] Section 174 deals with payments which come within the legally accepted meaning of the word "allowance". As noted, a person receiving an allowance is under no duty to account and remains free to use the allowance as he or she pleases. As a result, it is not possible to assess the reasonability of the actual "consumption" or "use" of the property or services in the manner

contemplated in paragraph 170(2)(*a*). It is also impossible to determine whether the amount of the tax that an employer is deemed to have paid with respect to an allowance pursuant to section 174 is calculated on a consideration or value that is reasonable in the circumstances, as contemplated by paragraph 170(2)(*b*), given that such “consideration” or “value”, if any, is unknown.

[55] That is why the test under paragraph 174(*b*) of the ETA is framed by reference to the reasonability of the allowance as a deductible expense in the hands of the employer (pursuant to the ITA) and not by reference to the actual consumption, use or value of the property or services which the allowance is intended to fund. Similarly, paragraph 174(*c)* assesses reasonability by reference to the purpose of the allowance (i.e., is the allowance reasonable for the purpose contemplated?) and not by reference to the actual consumption, use or value of the supplies.

[56] In the present case, the respondent concedes that as between the two tests set out in section 174, paragraph 174(*b*) is the only one applicable. The respondent also concedes that this last test has been met since it does not take issue with the appellants’ contention that the allowances were properly deductible pursuant to the relevant provisions of the ITA and therefore “reasonable in the circumstances” pursuant to that statute. Given this concession, the Tax Court Judge was bound to conclude that the reasonability test set out in section 174 had been met.

[57] For these reasons, I would dismiss the appeals on the sole basis that the appellants have failed to demonstrate a relation between the supply of property or services which the allowances were intended to fund and their activities, as required by subparagraph 174(*a*)(iv). Given that the

appeals were heard on a consolidated basis, the respondent should be entitled to only one set of costs in file A-114-09.

"Marc Noël"

J.A.

"I agree.
Pierre Blais C.J."

"I agree.
Carolyn Layden-Stevenson J.A."

APPENDIX A

A) *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA).

General rule for credits

169. (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

A × B

Where

A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and

B is
(*a*) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during

Règle générale

169. (1) Sous réserve des autres dispositions de la présente partie, un crédit de taxe sur les intrants d'une personne, pour sa période de déclaration au cours de laquelle elle est un inscrit, relativement à un bien ou à un service qu'elle acquiert, importe ou transfère dans une province participante, correspond au résultat du calcul suivant si, au cours de cette période, la taxe relative à la fourniture, à l'importation ou au transfert devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable :

A × B

où :

A représente la taxe relative à la fourniture, à l'importation ou au transfert, selon le cas, qui, au cours de la période de déclaration, devient payable par la personne ou est payée par elle sans qu'elle soit devenue payable;

B :
a) dans le cas où la taxe est réputée, par le paragraphe 202(4), avoir été payée relativement au bien le dernier jour d'une année d'imposition de la personne, le pourcentage que représente l'utilisation que la personne faisait du bien dans le cadre de ses

that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,

(*b*) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(*c*) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

Determining credit for improvement

(1.1) Where a person acquires or imports property or a service or brings it into a participating province partly for use in improving capital property of the person and partly for another purpose, for the purpose of determining an input tax credit of the person in respect of the property or service,

(*a*) notwithstanding section 138, that part of the property or service

activités commerciales au cours de cette année par rapport à l'utilisation totale qu'elle en faisait alors dans le cadre de ses activités commerciales et de ses entreprises;

b) dans le cas où le bien ou le service est acquis, importé ou transféré dans la province, selon le cas, par la personne pour utilisation dans le cadre d'améliorations apportées à une de ses immobilisations, le pourcentage qui représente la mesure dans laquelle la personne utilisait l'immobilisation dans le cadre de ses activités commerciales immédiatement après sa dernière acquisition ou importation de tout ou partie de l'immobilisation;

c) dans les autres cas, le pourcentage qui représente la mesure dans laquelle la personne a acquis ou importé le bien ou le service, ou l'a transféré dans la province, selon le cas, pour consommation, utilisation ou fourniture dans le cadre de ses activités commerciales.

Améliorations

(1.1) Lorsqu'une personne acquiert ou importe un bien ou un service, ou le transfère dans une province participante, pour l'utiliser partiellement dans le cadre d'améliorations apportées à une de ses immobilisations et partiellement à d'autres fins, les présomptions suivantes s'appliquent aux fins du calcul de son crédit de taxe sur les

that is for use in improving the capital property and the remaining part of the property or service are each deemed to be a separate property or service that does not form part of the other;

(*b*) the tax payable in respect of the supply, importation or bringing in, as the case may be, of that part of the property or service that is for use in improving the capital property is deemed to be equal to the amount determined by the formula

A × B

Where

A is the tax payable (in this section referred to as the "total tax payable") by the person in respect of the supply, importation or bringing in, as the case may be, of the property or service, determined without reference to this section, and

B is the extent (expressed as a percentage) to which the total consideration paid or payable by the person for the supply in Canada of the property or service or the value of the imported goods or the property brought in is or would be, if the person were a taxpayer under the *Income Tax Act*, included in determining the adjusted cost base to the person of the capital property for the purposes of that Act; and

(*c*) the tax payable in respect of that part of the property or service that is not for use in improving the

intrants relativement au bien ou au service :

a) malgré l'article 138, la partie du bien ou du service qui est à utiliser dans le cadre d'améliorations apportées à l'immobilisation et l'autre partie du bien ou du service sont réputées être des biens ou des services distincts qui sont indépendants l'un de l'autre;

b) la taxe payable relativement à la fourniture, à l'importation ou au transfert, selon le cas, de la partie du bien ou du service qui est à utiliser dans le cadre d'améliorations apportées à l'immobilisation est réputée correspondre au résultat du calcul suivant :

A × B

où :

A représente la taxe payable (appelée « taxe totale payable » au présent article) par la personne relativement à la fourniture, à l'importation ou au transfert, selon le cas, du bien ou du service, calculée compte non tenu du présent article,

B le pourcentage qui représente la mesure dans laquelle la contrepartie totale payée ou payable par la personne pour la fourniture au Canada du bien ou du service, ou la valeur des produits importés ou du bien transféré dans la province, est incluse dans le calcul du prix de base rajusté de l'immobilisation pour la personne pour l'application de la *Loi de l'impôt sur le revenu*,

capital property is deemed to be equal to the difference between the total tax payable and the amount determined under paragraph (*b*).

(1.2) and (1.3) [Repealed, 1997, c. 10, s. 161))

Credit for goods imported to provide commercial service

(2) Subject to this Part, where a registrant imports goods of a non-resident person who is not registered under Subdivision d of Division V for the purpose of making a taxable supply to the non-resident person of a commercial service in respect of the goods and, during a reporting period of the registrant, tax in respect of the importation becomes payable by the registrant or is paid by the registrant without having become payable, the input tax credit of the registrant in respect of the goods for the reporting period is an amount equal to that tax.

Restricted credit for selected listed financial institutions

(3) No amount shall be included in determining an input tax credit of a person in respect of tax that becomes payable by the person under subsection 165(2) or section 212.1 while the person is a selected listed financial institution unless

(*a*) the input tax credit is in respect of

(i) tax that the person is deemed to have paid under subsection 171(1), 171.1(2),

ou le serait si la personne était un contribuable aux termes de cette loi;

c) la taxe payable relativement à l'autre partie du bien ou du service est réputée égale à la différence entre la taxe totale payable et le montant calculé selon l'alinéa *b*).

(1.2) et (1.3) [Abrogés, 1997, ch. 10, art. 161]

Produits importés en vue d'un service commercial

(2) Sous réserve de la présente partie, lorsqu'un inscrit importe des produits d'une personne non-résidente qui n'est pas inscrite aux termes de la sous-section d de la section V, en vue d'effectuer, au profit de cette dernière, la fourniture taxable d'un service commercial relatif aux produits et que, au cours d'une période de déclaration de l'inscrit, la taxe relative à l'importation devient payable par lui ou est payée par lui sans qu'elle soit devenue payable, le crédit de taxe sur les intrants de l'inscrit relativement aux produits pour la période de déclaration est égal à cette taxe.

Crédit limité aux institutions financières désignées particulières

(3) Un montant n'est inclus dans le calcul du crédit de taxe sur les intrants d'une personne au titre de la taxe qui devient payable par elle aux termes du paragraphe 165(2) ou de l'article 212.1 pendant qu'elle est une institution financière désignée particulière que si, selon le cas :

206(2) or (3) or 208(2) or (3), or

(ii) an amount of tax that is prescribed for the purposes of paragraph (*a*) of the description of F in subsection 225.2(2); or

(*b*) the person is permitted to claim the input tax credit under subsection 193(1) or (2).

Required documentation

(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(*a*) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and

(*b*) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in a return filed under this Part.

Exemption

(5) Where the Minister is satisfied that there are or will be sufficient records available to establish the particulars of any supply or

a) le crédit de taxe sur les intrants se rapporte :

(i) soit à la taxe que la personne est réputée avoir payée aux termes des paragraphes 171(1), 171.1(2), 206(2) ou (3) ou 208(2) ou (3),

(ii) soit à un montant de taxe qui est visé par règlement pour l'application de l'alinéa *a*) de l'élément F de la formule figurant au paragraphe 225.2(2);

b) la personne peut demander le crédit de taxe sur les intrants aux termes des paragraphes 193(1) ou (2).

Documents

(4) L'inscrit peut demander un crédit de taxe sur les intrants pour une période de déclaration si, avant de produire la déclaration à cette fin :

a) il obtient les renseignements suffisants pour établir le montant du crédit, y compris les renseignements visés par règlement;

b) dans le cas où le crédit se rapporte à un bien ou un service qui lui est fourni dans des circonstances où il est tenu d'indiquer la taxe payable relativement à la fourniture dans une déclaration présentée au ministre aux termes de la présente partie, il indique la taxe dans une

importation or of any supply or importation of a specified class and the tax in respect of the supply or importation paid or payable under this Part, the Minister may

(*a*) exempt a specified registrant, a specified class of registrants or registrants generally from any of the requirements of subsection (4) in respect of that supply or importation or a supply or importation of that class; and

(*b*) specify terms and conditions of the exemption.

déclaration produite aux termes de la présente partie.

Dispense

(5) Le ministre peut, s'il est convaincu qu'il existe ou existera des documents suffisants pour établir les faits relatifs à une fourniture ou à une importation, ou à une catégorie de fournitures ou d'importations, ainsi que pour calculer la taxe relative à la fourniture ou à l'importation, qui est payée ou payable en application de la présente partie :

a) dispenser un inscrit, une catégorie d'inscrits ou les inscrits en général des exigences prévues au paragraphe (4) relativement à la fourniture ou à l'importation ou à une fourniture ou une importation de la catégorie;

b) préciser les modalités de la dispense.

Restriction

170. (1) In determining an input tax credit of a registrant, no amount shall be included in respect of the tax payable by the registrant in respect of

…

(*b*) a supply, importation or bringing into a participating province of property or a service that is acquired, imported or

Restriction

170. (1) Le calcul du crédit de taxe sur les intrants d'un inscrit n'inclut pas de montant au titre de la taxe payable par celui-ci relativement aux biens ou services suivants :

[…]

b) le bien ou le service acquis, importé ou transféré dans une province participante au cours

brought in by the registrant at any time in or before a reporting period of the registrant exclusively for the personal consumption, use or enjoyment (in this paragraph referred to as the "benefit") in that period of a particular individual who was, is or agrees to become an officer or employee of the registrant, or of another individual related to the particular individual, except where

(i) the registrant makes a taxable supply of the property or service to the particular individual or the other individual for consideration that becomes due in that period and that is equal to the fair market value of the property or service at the time the consideration becomes due, or

(ii) if no amount were payable by the particular individual for the benefit, no amount would be included under section 6 of the *Income Tax Act* in respect of the benefit in computing the income of the particular individual for the purposes of that Act; and

(*c*) a supply made in or before a reporting period of the registrant of property, by way of lease, licence or similar arrangement, primarily for the personal consumption, use or enjoyment in that period of

(i) where the registrant is an individual, the registrant or another individual related to

d'une période de déclaration de l'inscrit, ou antérieurement, exclusivement pour la consommation ou l'utilisation personnelles — appelées « avantage » au présent alinéa — au cours de cette période, soit d'un particulier qui est le cadre ou le salarié de l'inscrit — ou qui a accepté ou a cessé de l'être — , soit d'un autre particulier lié à un tel particulier, sauf si, selon le cas :

(i) l'inscrit a effectué, au profit de l'un de ces particuliers, une fourniture taxable du bien ou du service pour une contrepartie, qui devient due au cours de cette période, égale à la juste valeur marchande du bien ou du service au moment où la contrepartie devient due,

(ii) aucun montant n'étant payable par le particulier pour l'avantage, aucun montant n'est inclus en application de l'article 6 de la *Loi de l'impôt sur le revenu* relativement à l'avantage dans le calcul de son revenu aux fins de cette loi;

c) le bien fourni par bail, licence ou accord semblable au cours de la période de déclaration de l'inscrit, ou avant, principalement pour la consommation ou l'utilisation personnelles d'un des particuliers suivants au cours de cette période, sauf si l'inscrit a effectué au cours de cette période, au profit d'un tel particulier, une fourniture taxable du bien pour une contrepartie, qui devient due au cours de cette

the registrant,

(ii) where the registrant is a partnership, an individual who is a member of the partnership or another individual who is an employee, officer or shareholder of, or related to, a member of the partnership,

(iii) where the registrant is a corporation, an individual who is a shareholder of the corporation or another individual related to the shareholder, and

(iv) where the registrant is a trust, an individual who is a beneficiary of the trust or another individual related to the beneficiary,

except where the registrant makes a taxable supply of the property in that period to such an individual for consideration that becomes due in that period and that is equal to the fair market value of the supply at the time the consideration becomes due.

Further restriction

(2) In determining an input tax credit of a registrant, no amount shall be included in respect of the tax payable by the registrant in respect of property or a service acquired, imported or brought into a participating province by the registrant, except to the extent that

(*a*) the consumption or use of property or services of such

période, égale à la juste valeur marchande de la fourniture au moment où la contrepartie devient due :

(i) si l'inscrit est un particulier, lui-même ou un autre particulier qui lui est lié,

(ii) s'il est une société de personnes, le particulier qui en est un associé ou un autre particulier qui est le salarié, le cadre ou l'actionnaire de l'associé ou qui est lié à celui-ci,

(iii) s'il est une personne morale, le particulier qui est son actionnaire ou un autre particulier qui est lié à celui-ci,

(iv) s'il est une fiducie, le particulier qui est son bénéficiaire ou un autre particulier qui est lié à celui-ci.

Autre restriction

(2) Le calcul du crédit de taxe sur les intrants d'un inscrit n'inclut pas de montant au titre de la taxe payable par celui-ci relativement à un bien ou un service qu'il a acquis, importé ou transféré dans une province participante, sauf dans la mesure où :

a) d'une part, la consommation ou l'utilisation du bien ou du service, compte tenu de leur qualité, nature ou coût, est raisonnable dans les circonstances, eu égard à la nature des activités commerciales de l'inscrit;

quality, nature or cost is reasonable in the circumstances, having regard to the nature of the commercial activities of the registrant; and

(*b*) the amount is calculated on consideration for the property or service or on a value of the property that is reasonable in the circumstances.

b) d'autre part, le montant est calculé sur la contrepartie du bien ou du service ou sur la valeur du bien qui est raisonnable dans les circonstances.

Travel and other allowances

174. For the purposes of this Part, where

(*a*) a person pays an allowance

(i) to an employee of the person,

(ii) where the person is a partnership, to a member of the partnership, or

(iii) where the person is a charity or a public institution, to a volunteer who gives services to the charity or institution

for

(iv) supplies all or substantially all of which are taxable supplies (other than zero-rated supplies) of property or services acquired in Canada by the employee, member or volunteer in relation to activities engaged in by the

Indemnités pour déplacement et autres

174. Pour l'application de la présente partie, une personne est réputée avoir reçu la fourniture d'un bien ou d'un service dans le cas où, à la fois :

a) la personne verse une indemnité à l'un de ses salariés, à l'un de ses associés si elle est une société de personnes ou à l'un de ses bénévoles si elle est un organisme de bienfaisance ou une institution publique :

(i) soit pour des fournitures dont la totalité, ou presque, sont des fournitures taxables, sauf des fournitures détaxées, de biens ou de services que le salarié, l'associé ou le bénévole a acquis au Canada relativement à des activités qu'elle exerce,

(ii) soit pour utilisation au Canada d'un véhicule à moteur

person, or

(v) the use in Canada, in relation to activities engaged in by the person, of a motor vehicle,

(*b*) an amount in respect of the allowance is deductible in computing the income of the person for a taxation year of the person for the purposes of the *Income Tax Act*, or would have been so deductible if the person were a taxpayer under that Act and the activity were a business, and

(*c*) in the case of an allowance to which subparagraph 6(1)(*b*)(v), (vi), (vii) or (vii.1) of that Act would apply

(i) if the allowance were a reasonable allowance for the purposes of that subparagraph, and

(ii) where the person is a partnership and the allowance is paid to a member of the

partnership, if the member were an employee of the partnership, or, where the person is a charity or a public institution and the allowance is paid to a volunteer, if the volunteer were an employee of the charity or institution,

the person considered, at the time the allowance was paid, that the allowance would be a reasonable allowance for those purposes and it is

relativement à des activités qu'elle exerce;

b) un montant au titre de l'indemnité est déductible dans le calcul du revenu de la personne pour une année d'imposition en application de la *Loi de l'impôt sur le revenu*, ou le serait si elle était un contribuable aux termes de cette loi et l'activité, une entreprise;

c) lorsque l'indemnité constitue une allocation à laquelle les sous-alinéas 6(1)*b*)(v), (vi), (vii) ou (vii.1) de la *Loi de l'impôt sur le revenu* s'appliqueraient si l'indemnité était une allocation raisonnable aux fins de ces sous-alinéas, les conditions suivantes sont remplies :

(i) dans le cas où la personne est une société de personnes et où l'indemnité est versée à l'un de ses associés, ces sous-alinéas s'appliqueraient si l'associé était un salarié de la société,

(ii) si la personne est un organisme de bienfaisance ou une institution publique et que l'indemnité est versée à l'un de ses bénévoles, ces sous-alinéas s'appliqueraient si le bénévole était un salarié de la personne,

(iii) la personne considère, au moment du versement de l'indemnité, que celle-ci est une allocation raisonnable aux fins de ces sous-alinéas,

reasonable for the person to have considered, at that time, that the allowance would be a reasonable allowance for those purposes, the following rules apply:

(*d*) the person is deemed to have received a supply of the property or service,

(*e*) any consumption or use of the property or service by the employee, member or volunteer is deemed to be consumption or use by the person and not by the employee, member or volunteer, and

(*f*) the person is deemed to have paid, at the time the allowance is paid, tax in respect of the supply equal to the amount determined by the formula

A × (B/C)

Where

A is the amount of the allowance,

B is

(i) the total of the rate set out in subsection 165(1) and the tax rate for a participating province if

(A) all or substantially all of the supplies for which the allowance is paid were made in participating provinces, or

(B) the allowance is paid for the use of the motor vehicle in participating provinces, and

(ii) in any other case, the rate set

(iv) il est raisonnable que la personne l'ait considérée ainsi à ce moment.

De plus :

d) toute consommation ou utilisation du bien ou du service par le salarié, l'associé ou le bénévole est réputée effectuée par la personne et non par l'un de ceux-ci;

e) la personne est réputée avoir payé, au moment du versement de l'indemnité et relativement à la fourniture, une taxe égale au résultat du calcul suivant :

A × (B/C)

OU :

A représente le montant de l'indemnité,

B :

(i) la somme du taux fixé au paragraphe 165(1) et du taux de taxe applicable à une province participante si, selon le cas :

(A) la totalité ou la presque totalité des fournitures relativement auxquelles l'indemnité est versée ont été effectuées dans des provinces participantes,

(B) l'indemnité est versée en vue de l'utilisation du véhicule à moteur dans des provinces participantes,

(ii) dans les autres cas, le taux fixé

out in subsection 165(1), and

C is the total of 100% and the percentage determined for B.

au paragraphe 165(1),

C la somme de 100% et du pourcentage déterminé selon l'élément B.

B) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA).

Amounts to be included as income from office or employment

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable

…

Personal or living expenses

(*b*) all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

(i) travel, personal or living expense allowances

(A) expressly fixed in an Act of Parliament, or

(B) paid under the authority of the Treasury Board to a person who was appointed or whose services were engaged pursuant to the *Inquiries Act*, in respect of the discharge of the person's duties relating to

Éléments à inclure à titre de revenu tiré d'une charge ou d'un emploi

6. (1) Sont à inclure dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi, ceux des éléments suivants qui sont applicables :

[…]

Frais personnels ou de subsistance

b) les sommes qu'il a reçues au cours de l'année à titre d'allocations pour frais personnels ou de subsistance ou à titre d'allocations à toute autre fin, sauf :

[…]

(i) les allocations pour frais de déplacement ou frais personnels ou de subsistance :

(A) soit expressément fixées par une loi fédérale,

(B) soit payées en vertu d'une autorisation du Conseil du Trésor à une personne nommée, ou dont les services étaient retenus, conformément à la *Loi sur les enquêtes*,

the appointment or engagement,

(ii) travel and separation allowances received under service regulations as a member of the Canadian Forces,

(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph 250(1)(*b*), 250(1)(*c*), 250(1)(*d*) or (*d.1*),

(iv) representation or other special allowances received by a person who is an agent-general of a province in respect of a period while the person was in Ottawa as the agent-general of the province,

(v) reasonable allowances for travel expenses received by an employee from the employee's employer in respect of a period when the employee was employed in connection with the selling of property or negotiating of contracts for the employee's employer,

(v.1) allowances for board and lodging of the taxpayer, to a maximum total of $300 for each month of the year, if

(A) the taxpayer is, in that month, a registered participant with, or member of, a sports team or

relativement à l'accomplissement des fonctions afférentes à sa nomination ou à son engagement,

(ii) les allocations de déplacement et les indemnités d'absence du foyer reçues en vertu de règlements militaires à titre de membre des Forces canadiennes,

(iii) les allocations de représentation ou autres allocations spéciales reçues et afférentes à une période d'absence du Canada, à titre de personne visée à l'alinéa 250(1)*b*), *c*), *d*) ou *d.1*),

(iv) les allocations de représentation ou autres allocations spéciales reçues par un agent général d'une province et afférentes à une période pendant laquelle il était à Ottawa en qualité d'agent général de la province,

(v) les allocations raisonnables pour frais de déplacement reçues de son employeur par un employé et afférentes à une période pendant laquelle son emploi était lié à la vente de biens ou à la négociation de contrats pour son employeur,

(v.1) les allocations pour pension et logement du contribuable, jusqu'à concurrence de 300 $ pour chaque mois de l'année, si, à la fois :

(A) le contribuable est, au cours du mois en cause, inscrit à une équipe sportive ou à un programme récréatif de l'employeur à titre de

recreation program of the employer in respect of which membership or participation is restricted to persons under 21 years of age,

(B) the allowance is in respect of the taxpayer's participation or membership and is not attributable to services of the taxpayer as a coach, instructor trainer, referee, administrator or other similar occupation,

(C) the employer is a registered charity or a non-profit organization described in paragraph 149(1)(*l*), and

(D) the allowance is reasonably attribut- able to the cost to the taxpayer of living away from the place where the employee would, but for the employment, ordinarily reside,

(vi) reasonable allowances received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation for expenses for transportation incident to the discharge of the duties of that office or employment,

(vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an

participant ou de membre, et la participation ou l'adhésion à l'équipe ou au programme est réservée aux personnes de moins de 21 ans,

(B) l'allocation a trait à la participation ou à l'adhésion du contribuable et n'est pas attribuable à des services qu'il rend à titre d'entraîneur, d'instructeur, de moniteur, d'arbitre, d'administrateur ou d'une autre occupation semblable,

(C) l'employeur est un organisme de bienfaisance enregistré ou une organisation à but non lucratif visée à l'alinéa 149(1)*l*),

(D) il est raisonnable d'attribuer l'allocation au coût pour le contribuable du fait de vivre à l'extérieur du lieu où il résiderait habituellement si ce n'était l'emploi,

(vi) les allocations raisonnables reçues par un ministre du culte ou un membre du clergé desservant un diocèse, une paroisse ou une congrégation, ou en ayant la charge, pour les frais de transport qu'a entraînés l'accomplissement des fonctions de sa charge ou de son emploi,

(vii) les allocations raisonnables pour frais de déplacement, à l'exception des allocations pour l'usage d'un véhicule à moteur, qu'un employé — dont l'emploi n'est pas lié à la vente de biens ou à la négociation de contrats pour

employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for traveling away from

(A) the municipality where the employer's establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and

(B) the metropolitan area, if there is one, where that establishment was located,

in the performance of the duties of the employee's office or employment,

(vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,

(viii) [Repealed, 1999, c. 22, s. 2(1)]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the

son employeur — a reçues de son employeur pour voyager, dans l'accomplissement des fonctions de sa charge ou de son emploi, à l'extérieur :

(A) de la municipalité où était situé l'établissement de l'employeur dans lequel l'employé travaillait habituellement ou auquel il adressait ordinairement ses rapports,

(B) en outre, le cas échéant, de la région métropolitaine où était situé cet établissement,

(vii.1) les allocations raisonnables pour l'usage d'un véhicule à moteur qu'un employé — dont l'emploi n'est pas lié à la vente de biens ou à la négociation de contrats pour son employeur — a reçues de son employeur pour voyager dans l'accomplissement des fonctions de sa charge ou de son emploi,

(viii) [Abrogé, 1999, ch. 22, art. 2(1)]

(ix) les allocations — n'excédant pas des montants raisonnables — qu'un employé a reçues de son employeur pour un enfant de l'employé vivant à l'extérieur du domicile de ce dernier au lieu où il est obligé de demeurer en raison de son emploi et fréquentant à plein temps un établissement scolaire dans lequel la langue principale d'enseignement est celle des langues officielles du Canada qui est la langue première de l'employé, si les conditions

employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live and in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities,

and for the purposes of subparagraphs 6(1)(*b*)(*v*), 6(1)(*b*)(vi) and 6(1)(*b*)(vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the

suivantes sont réunies :

(A) aucun établissement scolaire convenant à l'enfant et utilisant principalement cette langue dans l'enseignement n'est accessible au lieu où l'employé est tenu de demeurer,

(B) l'établissement scolaire fréquenté par l'enfant a cette langue pour langue principale d'enseignement et n'est pas plus éloigné de ce lieu que l'agglomération la plus proche de ce lieu où un établissement scolaire semblable offre des installations suffisantes pour le logement et les repas;

pour l'application des sous-alinéas (v), (vi) et (vii.1), une allocation reçue au cours de l'année par le contribuable pour l'usage d'un véhicule à moteur dans l'accomplissement des fonctions de sa charge ou de son emploi est réputée ne pas être raisonnable dans les cas suivants :

(x) l'usage du véhicule n'est pas, pour la fixation de l'allocation, uniquement évalué en fonction du nombre de kilomètres parcourus par celui-ci dans l'accomplissement des fonctions de la charge ou de l'emploi,

(xi) le contribuable, à la fois, reçoit une allocation pour cet usage et est remboursé de tout ou partie de ses dépenses pour le même usage (sauf s'il s'agit d'un remboursement pour frais d'assurance-automobile commerciale supplémentaire, frais de péage routier ou frais de

office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

…

traversier et si l'allocation a été déterminée compte non tenu des dépenses ainsi remboursées);

[…]

Income

9. (1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

Revenu

9. (1) Sous réserve des autres dispositions de la présente partie, le revenu qu'un contribuable tire d'une entreprise ou d'un bien pour une année d'imposition est le bénéfice qu'il en tire pour cette année.

General limitations

18. (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

General limitation

(*a*) an outlay or expense except to the extent that it was made or

Exceptions d'ordre général

18. (1) Dans le calcul du revenu du contribuable tiré d'une entreprise ou d'un bien, les éléments suivants ne sont pas déductibles :

Restriction générale

a) les dépenses, sauf dans la mesure où elles ont été engagées

incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

ou effectuées par le contribuable en vue de tirer un revenu de l’entreprise ou du bien;

General limitation re expenses

67. In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

Restriction générale relative aux dépenses

67. Dans le calcul du revenu, aucune déduction ne peut être faite relativement à une dépense à l’égard de laquelle une somme est déductible par ailleurs en vertu de la présente loi, sauf dans la mesure où cette dépense était raisonnable dans les circonstances.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-114-09 A-113-09

(APPEALS FROM JUDGMENTS OF THE HONOURABLE JUSTICE L.M. LITTLE OF THE TAX COURT OF CANADA, DATED FEBRUARY 12, 2009, NO. 2007-728(GST)G 2007-731(GST).)

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APPEARANCES:

Brad Berg Robert Kreklewich Rahat Godil	FOR THE APPELLANTS
Marilyn Vardy Suzanne M. Bruce	FOR THE RESPONDENT

SOLICITORS OF RECORD:

BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors Toronto, Ontario	FOR THE APPELLANTS
John H. Sims Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT