Federal Court of Appeal | Cour d'appel fédérale

Date: 20191212

Docket: A-298-18

Citation: 2019 FCA 310

CORAM: **NADON J.A.**
RIVOALEN J.A.
LOCKE J.A.

BETWEEN:

LANDBOUWBEDRIJF BACKX B.V.

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 30, 2019.

Judgment delivered at Ottawa, Ontario, on December 12, 2019.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: NADON J.A.
LOCKE J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20191212

Docket: A-298-18

Citation: 2019 FCA 310

CORAM: **NADON J.A.**
RIVOALEN J.A.
LOCKE J.A.

BETWEEN:

LANDBOUWBEDRIJF BACKX B.V.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

RIVOALEN J.A.

I. Introduction

[1] The appellant is a limited liability company incorporated under the laws of the Kingdom of the Netherlands. In 2009, it realized a capital gain from the disposition of its partnership interest in a dairy-farm operation located in Ontario. The Minister of National Revenue assessed the appellant as being a resident of Canada under Part I of the *Income Tax Act*, R.S.C., 1985, c. 1

(5th Supp.) (the Act) for the 2009 taxation year and as a non-resident of Canada under Part XIV of the Act. The appellant appealed the assessment to the Tax Court of Canada. The Tax Court judge, Justice Guy Smith, rendered a judgment on July 17, 2018 (2018 TCC 142) allowing the appeal with respect to Part XIV of the Act and referring the matter back to the Minister for reconsideration and reassessment on the basis that the appellant is liable for tax payable in 2009 under Part I as a resident of Canada.

[2] This appeal deals only with the 2009 assessment. The appellant raises three arguments before this Court.

A. It submits that it is a non-resident of Canada. Consequently, the Tax Court misapplied the common law test for determining residency and erred in law when it did not consider the doctrine of estoppel and reasonable expectations in relation to the appellant's residency in the Netherlands;

B. In the alternative, should this Court find that the Tax Court made no error in determining that the appellant was a Canadian resident in 2009, it erred when it determined that subsection 128.1(1) of the Act was not triggered; and

C. Did the Tax Court err in its application of Article 4(3) of the *Convention Between Canada and the Kingdom of the Netherlands For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income* (the Convention)?

[3] The standard of review is not in dispute. The standard of review applicable to appeals from the TCC is, as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, palpable

and overriding error for questions of fact or mixed fact and law and correctness for questions of law (see also *Lubega-Matovu v. Canada*, 2016 FCA 315, at paragraph 12).

[4] I will now consider the appellant's three arguments.

II. Did the TCC misapply the common law test for determining residency and err in law when it did not consider the doctrine of estoppel and reasonable expectations in relation to the appellant's residency?

[5] Canada's tax system is one of self-reporting. It is well-established that the principal basis for imposing income tax in Canada is residency (*St. Michael Trust Corp. v. Canada*, 2010 FCA 309, at paragraph 52 [*St. Michael*] aff'd in *Fundy Settlement v. Canada*, 2012 SCC 14, [2012] 1 S.C.R. 520, at paragraph 7 [*Fundy Settlement*]).

[6] The Act does not define residency. To determine a corporation's residency therefore, we can look at subsection 250(4) of the Act, which sets out that a corporation is deemed to have been a resident in Canada throughout a taxation year under certain conditions. The application of this subsection was raised during the trial but was not considered by the Tax Court. I would agree that it does not apply to this appeal.

[7] If the corporation is not deemed a resident under 250(4) of the Act, it may still be a resident of Canada under the common law. That is precisely what the Tax Court determined.

[8] To decide the question of the appellant's residency, the Tax Court applied the central management and control test found in the common law (Reasons at paragraphs 29-42). The

parties agree that this is the proper test to apply when the Tax Court faces such a question (*British Columbia Electric Railway v. R.*, [1945] C.T.C. 162; *Crossley Carpets (Canada) Ltd. v. Minister of National Revenue*, (1967) 67 D.T.C. 522; *St. Michael* and *Fundy Settlement*). Generally, residency is a question of fact.

[9] The facts of this case came from the testimony of the director, one of the shareholders and a chartered accountant. The evidence also consisted of a partial agreed statement of facts and several exhibits. The Tax Court made several findings of fact and reached the conclusion that the appellant was a resident of Canada for the 2009 year based on the evidence (Reasons at paragraphs 43 to 47).

[10] The record supports the Tax Court's factual findings that the shareholders in Canada were making the decisions, not the director in the Netherlands. Examples of the evidence of decision-making considered by the Tax Court are: (i) the director was the sister of one of the shareholders; (ii) she had no experience in farming and no prior business experience; (iii) she paid the bills for the appellant based on instructions from the shareholders; (iv) she executed documents to implement decisions made by the shareholders; (v) she did not participate in the decision to dispose of the appellant's interest in the farm partnership; and (vi) she was not included in certain important email exchanges made in 2009 between the shareholders in Canada and their Canadian and Dutch advisors or their Canadian accountant to finalize the restructuring of the shareholders' family holdings to address tax planning issues (Reasons at paragraphs 7 and 43; respondent's memorandum of fact and law at paragraphs 6, 10, 31, 33 and 36).

[11] As part of its residency argument, the appellant added that the Minister's acceptance of the appellant's residency as being the Netherlands for previous tax years binds the Minister. It relies on the position taken by the Minister in 1998 to 2008 when he taxed and assessed the appellant as a non-resident of Canada. The appellant invokes an estoppel argument to preclude the Minister from assessing it as a Canadian resident in 2009.

[12] I cannot agree.

[13] It is well-established law that the doctrine of estoppel cannot be invoked to preclude the exercise of a statutory duty (*Ludmer v. Canada*, [1995] 2 F.C. 3; 182 N.R. 125, 1994 CarswellNat 1644, at paragraphs 2, 9 and 17 [*Ludmer*]). As was re-stated in *Ludmer*, "a concession made in one year in the absence of any statutory provisions to the contrary, does not preclude the Minister from taking a different view in a later year. An assessment is conclusive as between the parties only in relation to the assessment for the year [in] which it was made." (*Ludmer* at paragraph 12).

[14] Furthermore, how the Minister may have treated similar facts in previous years does not bind the Court. As indicated at paragraph 13 of *Ludmer*, "the respondent is not the arbiter of what is right or wrong in tax law." Therefore, although the Tax Court did not address the estoppel argument in its reasons, it nonetheless reached the correct conclusion (Reasons at paragraph 47).

[15] In summary on the question of residency, I am of the view that the Tax Court committed no palpable and overriding errors in finding that the appellant's central management and control in 2009 actually abided in Canada. The appellant was a resident of Canada in 2009.

III. In the alternative, if the Tax Court made no error when it found that the appellant was a Canadian resident in 2009, did it err when it failed to apply subsection 128.1(1) of the Act?

[16] Having agreed with the Tax Court that the appellant is a resident of Canada for tax purposes in 2009, I now turn to whether it erred when it found that "this conclusion does not trigger a deemed disposition or an analysis of subsection 128.1(1), since there was no evidence that the Appellant actually ceased to be a resident of the Netherlands or was continued under Canadian law." (Reasons at paragraph 55).

[17] The tax provisions related to entering Canada found at subsection 128.1(1) of the Act fall under "Division F, Special Rules Applicable in Certain Circumstances". In this case, the certain circumstance is "Changes in Residence". Subsection 128.1(1) is reproduced here as Annex A.

[18] Subsection 128.1(1) is triggered once the taxpayer becomes a Canadian resident. Paragraph (b) of the subsection indicates that, with certain exceptions, a taxpayer is deemed to have disposed of all their property immediately before entering Canada for proceeds equal to fair market value. Paragraph (c) calls for a deemed reacquisition of the property at the same fair market value figure. This process establishes a new cost basis for the taxpayer's property, as at the time of entering Canada. The goal here is to avoid having Canadian taxation apply to gains that accrued prior to the taxpayer's immigration or entry into Canada.

[19] The appellant was correct when it submitted at paragraph 69 of its memorandum of fact and law that subsection 128.1(1) of the Act provides only for the consequences of a taxpayer becoming resident of Canada. There is no additional requirement that the taxpayer must cease being a resident of its former State prior to the application of the deemed disposition rules set out in subsection 128.1(1) of the Act.

[20] Accordingly, I find that the Tax Court erred when it determined that subsection 128.1(1) of the Act was not triggered because there was no evidence that the appellant actually ceased to be a resident of the Netherlands or was continued under Canadian law.

IV. Did the Tax Court err in failing to apply Article 4(3) of the Convention?

[21] The Act defines "tax treaty" at section 248(1) as a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of the country, which has the force of law in Canada at that time. The Convention in this appeal is a bilateral tax treaty between Canada and the Netherlands incorporated into our domestic law. In the event of any inconsistency between the provisions of the Convention and any other domestic law, the provisions of the Convention prevail (*Acts of the Parliament of Canada, Canada-Netherlands Income Tax Convention Act 1986*, Chapter 48, Part I, section 4)

[22] Before turning to the argument focused on Article 4(3) of the Convention, it is important to consider the Convention's overall purpose and examine other Articles that apply to this appeal.

[23] The title and preamble of the Convention describe its purpose as being an agreement between the Government of the Kingdom of the Netherlands and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. One of the purposes of the Convention is to provide certain relief otherwise imposed by a State by avoiding double taxation.

[24] Article 3 of the Convention defines certain terms. For example, "person" includes a corporation. The term "competent authority" means in the case of Canada, the Minister of Revenue or his authorized representative. In the case of the Netherlands, the Minister of Finance or his authorized representative. "State" means Canada or the Netherlands. "States" means Canada and the Netherlands.

[25] The term resident is defined at Article 4(3) of the Convention. It sets out the following:

Article 4	**Article 4**
Resident	**Résident**
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, the competent authorities of the States shall endeavour to settle the question by mutual agreement having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall be deemed not to be a resident of either State for the purposes of Articles 6 to 21 inclusive and Articles 23 and 24.	3. Lorsque, selon les dispositions du paragraphe 1, une personne autre qu'une personne physique est un résident de chacun des États, les autorités compétentes des États s'efforcent de trancher la question d'un commun accord en ayant égard à son siège de direction effective, au lieu où elle a été constituée ou créée et à tous autres éléments pertinents. A défaut d'un tel accord, cette personne est considérée comme n'étant pas un résident d'aucun des États pour l'application des articles 6 à 21 inclus et des articles 23 et 24.
[My emphasis].	[Mon soulignement].

[26] Encompassed in the deemed non-resident provision exception referenced above is Article 13 of the Convention, which deals specifically with capital gains.

[27] In the alternative, the appellant argues before this Court, as it did before the Tax Court, that it was a resident of Canada and the Netherlands in 2009. It relies on the wording of Article 4(3) and submits that as no agreement exists with respect to its taxation in 2009 between the competent authorities of both States, it is deemed not to be a resident of either State for the purpose of Article 13.

[28] Further, at paragraph 67 if its memorandum of fact and law, the appellant submits that an agreement between the competent authorities is a condition precedent to any assessment on the disposition of the appellant's partnership interest since the Convention deemed the appellant to be neither a resident of Canada nor the Netherlands. It argues that, until the competent authorities resolve this issue, this is a condition precedent that has not yet been satisfied and the Minister has accordingly not established any authority to assess the appellant for the gain it realised as a resident of Canada.

[29] The Tax Court stated that because it found the appellant was a resident of Canada for tax purposes, the Convention does not have a direct bearing on this appeal (Reasons at paragraph 52). This is an error because if the Convention provides an exception or relief to the appellant, it would take precedence over the Act. The Tax Court did not apply and consider the provisions of the Convention to the facts of this case.

V. Conclusion

[30] For these reasons, I would allow the appeal.

[31] The Tax Court made no palpable and overriding errors of fact when it found that the appellant was a resident of Canada for tax purposes in 2009. It erred when it concluded that subsection 128.1(1) of the Act was not triggered and did not provide an analysis of subsection 128.1(1). It also erred when it found that since the appellant was a resident of Canada for tax purposes, the Convention does not have a direct bearing on the tax appeal.

[32] I would set aside the judgment of the Tax Court and refer the matter back to the Tax Court for reconsideration in light of these reasons. I would award costs to the appellant.

"Marianne Rivoalen"
J.A.

“I agree.
M. Nadon J.A.”

“I agree.
George R. Locke J.A.”

ANNEXE A

Immigration	**Immigration**
128.1(1) For the purposes of this Act, where at a particular time a taxpayer becomes resident in Canada,	128.1(1) Pour l'application de la présente loi, les règles suivantes s'appliquent au contribuable qui commence à résider au Canada à un moment donné :
Year-end, fiscal period	**Fin d'année et exercice**
(a) where the taxpayer is a corporation or a trust,	a) lorsque le contribuable est une société ou une fiducie, les présomptions suivantes s'appliquent :
(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and	(i) son année d'imposition qui comprendrait par ailleurs le moment donné est réputée avoir pris fin immédiatement avant ce moment et sa nouvelle année d'imposition, avoir commencé à ce moment,
(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;	(ii) aux fins de déterminer l'exercice du contribuable après le moment donné, le contribuable est réputé ne pas avoir établie d'exercice avant ce moment;
Deemed disposition	**Présomption de disposition**
(b) the taxpayer is deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than, if the taxpayer is an individual,	b) le contribuable est réputé avoir disposé, au moment (appelé « moment de la disposition » au présent paragraphe) immédiatement avant le moment immédiatement avant le moment donné, de chaque bien lui appartenant, à l'exception, s'il est un particulier, des biens suivants, pour un produit égal à la juste valeur marchande du bien au moment de la disposition :
(i) property that is a taxable	(i) les biens qui sont des biens

Canadian property,

(ii) property that is described in the inventory of a business carried on by the taxpayer in Canada at the time of disposition,

(iii) property included in Class 14.1 of Schedule II to the Income Tax Regulations, in respect of a business carried on by the taxpayer in Canada at the time of disposition, and

(iv) an excluded right or interest of the taxpayer, other than an interest described in paragraph (k) of the definition excluded right or interest in subsection (10),

(v) [Repealed, 2001, c. 17, s. 123]

for proceeds equal to its fair market value at the time of disposition;

Deemed acquisition

(c) the taxpayer shall be deemed to have acquired at the particular time each property deemed by paragraph 128.1(1)(b) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

Deemed dividend to immigrating corporation

(c.1) if the taxpayer is a particular corporation that immediately before the time of disposition owned a share of the capital stock of another corporation resident in Canada, a dividend is deemed to have been paid by the other corporation, and received by the particular corporation, immediately before the time of

canadiens imposables,

(ii) les biens à porter à l'inventaire d'une entreprise que le contribuable exploite au Canada au moment de la disposition,

(iii) les biens compris dans la catégorie 14.1 de l'annexe II du Règlement de l'impôt sur le revenu relatifs à une entreprise que le contribuable exploite au Canada au moment de la disposition,

(iv) les droits, participations ou intérêts exclus du contribuable (sauf une participation visée à l'alinéa k) de la définition de droit, participation ou intérêt exclu au paragraphe (10));

(v) [Abrogé, 2001, ch. 17, art. 123]

Présomption d'acquisition

c) le contribuable est réputé avoir acquis, au moment donné, chaque bien dont il est réputé par l'alinéa b) avoir disposé, à un coût égal au produit de disposition du bien;

Dividende réputé versé à une société arrivant au Canada

c.1) lorsque le contribuable est une société donnée qui, immédiatement avant le moment de la disposition, était propriétaire d'une action du capital-actions d'une autre société résidant au Canada, est réputé avoir été versé par cette dernière, et reçu par la société donnée, immédiatement avant le moment de

disposition, equal to the amount, if any, by which the fair market value of the share immediately before the time of disposition exceeds the total of

(i) the paid-up capital in respect of the share immediately before the time of disposition, and

(ii) if the share immediately before the time of disposition was taxable Canadian property that is not treaty-protected property, the amount by which, at the time of disposition, the fair market value of the share exceeds its cost amount;

la disposition, un dividende égal à l'excédent éventuel de la juste valeur marchande de l'action immédiatement avant le moment de la disposition sur le total des montants suivants :

(i) le capital versé au titre de l'action immédiatement avant le moment de la disposition,

(ii) si l'action était, immédiatement avant le moment de la disposition, un bien canadien imposable qui n'est pas un bien protégé par traité, l'excédent, au moment de la disposition, de la juste valeur marchande de l'action sur son coût indiqué,

Deemed dividend to shareholder of immigrating corporation

(c.2) if the taxpayer is a corporation and an amount has been added to the paid-up capital in respect of a class of shares of the corporation's capital stock because of paragraph (2)(b),

(i) the corporation is deemed to have paid, immediately before the time of disposition, a dividend on the issued shares of the class equal to the amount of the paid-up capital adjustment in respect of the class, and

(ii) a dividend is deemed to have been received, immediately before the time of disposition, by each person (other than a person in respect of whom the corporation is a foreign affiliate) who held any of the issued shares of the class equal to that proportion of the dividend so

Dividende réputé versé à l'actionnaire d'une société arrivant au Canada

c.2) lorsque le contribuable est une société et qu'un montant ait été ajouté, par l'effet de l'alinéa (2)b), au capital versé au titre d'une catégorie d'actions de son capital-actions :

(i) la société est réputée avoir versé, immédiatement avant le moment de la disposition, sur les actions émises de la catégorie un dividende égal au montant de redressement du capital versé au titre de la catégorie,

(ii) chaque personne (sauf une personne à l'égard de laquelle la société est une société étrangère affiliée) qui détenait des actions émises de la catégorie est réputée avoir reçu, immédiatement avant le moment de la disposition, un dividende égal au produit de la

deemed to have been paid that the number of shares of the class held by the person immediately before the time of disposition is of the number of issued shares of the class outstanding immediately before the time of disposition;

multiplication du montant du dividende ainsi réputé avoir été versé par le rapport entre le nombre d'actions de la catégorie détenues par la personne immédiatement avant le moment de la disposition et le nombre d'actions émises de la catégorie qui étaient en circulation immédiatement avant le moment de la disposition;

Foreign affiliate dumping — immigrating corporation

(c.3) if the taxpayer is a corporation that was, immediately before the particular time, controlled by a particular non-resident corporation and the taxpayer owned, immediately before the particular time, one or more shares of one or more non-resident corporations (each of which is in this paragraph referred to as a "subject affiliate") that, immediately after the particular time, were — or that became, as part of a transaction or event or series of transactions or events that includes the taxpayer having become resident in Canada — foreign affiliates of the taxpayer, then

Opérations de transfert de sociétés étrangères affiliées — société arrivant au Canada

c.3) si le contribuable est une société qui était contrôlée par une société non-résidente donnée immédiatement avant le moment donné et qu'il détenait, immédiatement avant le moment donné, une ou plusieurs actions d'une ou de plusieurs sociétés non-résidentes (appelées chacune « société affiliée déterminée » au présent alinéa) qui, immédiatement après le moment donné, étaient — ou sont devenues dans le cadre d'une opération, d'un événement ou d'une série d'opérations ou d'événements qui comprend le moment où le contribuable commence à résider au Canada — des sociétés étrangères affiliées du contribuable, les règles ci-après s'appliquent :

(i) in computing the paid-up capital, at any time after the time that is immediately after the particular time, of any particular class of shares of the capital stock of the taxpayer there is to be deducted the amount determined by the formula

(i) la somme obtenue par la formule ci-après est à déduire dans le calcul du capital versé, à tout moment après le moment immédiatement après le moment donné, au titre d'une catégorie donnée d'actions du capital-actions du contribuable :

A x B/C

where

A is the lesser of

(A) the paid-up capital in respect of all of the shares of the capital stock of the taxpayer at the time that is immediately after the particular time, and

(B) the total of all amounts each of which is the fair market value at the particular time of

(I) a share of the capital stock of a subject affiliate owned by the taxpayer at the particular time, or

(II) an amount owing by the subject affiliate to the taxpayer at the particular time,

B is the paid-up capital in respect of the particular class of shares of the capital stock of the taxpayer at the time that is immediately after the particular time, and

C is the paid-up capital in respect of all the shares of the capital stock of the taxpayer at the time that is immediately after the particular time, and

(ii) for the purposes of Part XIII, the taxpayer is deemed, immediately after the particular time, to have paid to the particular non-resident corporation, and the particular non-resident corporation is deemed, immediately after the particular time, to have received from the taxpayer, a dividend equal to the amount, if any, by which the amount

A x B/C

où:

A représente la moins élevée des sommes suivantes:

(A) le capital versé au titre de l'ensemble des actions du capital-actions du contribuable au moment immédiatement après le moment donné,

(B) le total des sommes dont chacune représente la juste valeur marchande au moment donné :

(I) d'une action du capital-actions d'une société affiliée déterminée qui appartient au contribuable à ce moment,

(II) d'une somme due au contribuable par la société affiliée déterminée à ce moment,

B le capital versé au titre de la catégorie donnée d'actions du capital-actions du contribuable au moment immédiatement après le moment donné,

C le capital versé au titre de l'ensemble des actions du capital-actions du contribuable au moment immédiatement après le moment donné,

(ii) pour l'application de la partie XIII, le contribuable est réputé, immédiatement après le moment donné, avoir versé à la société non-résidente donnée, et celle-ci est réputée, immédiatement après le moment donné, avoir reçu du contribuable, un dividende égal à l'excédent de la somme déterminée selon la division (B) de l'élément

determined under clause (B) of the description of A in subparagraph (i) exceeds the amount determined under clause (A) of the description of A in subparagraph (i); and

A de la formule figurant au sous-alinéa (i) sur la somme déterminée selon la division (A) de cet élément;

Foreign affiliate

(d) where the taxpayer was, immediately before the particular time, a foreign affiliate of another taxpayer that is resident in Canada,

(i) the affiliate is deemed to have been a controlled foreign affiliate of the other taxpayer immediately before the particular time, and

(ii) the prescribed amount is to be included in the foreign accrual property income of the affiliate for its taxation year that ends immediately before the particular time.

…

Emigration

(4) For the purposes of this Act, where at a particular time a taxpayer ceases to be resident in Canada,

Year-end, fiscal period

(a) where the taxpayer is a corporation or a trust,

(i) the taxpayer's taxation year that would otherwise include the particular time shall be deemed to have ended immediately before the

Société étrangère affiliée

d) lorsque le contribuable était, immédiatement avant le moment donné, une société étrangère affiliée d'un autre contribuable qui réside au Canada :

(i) le contribuable est réputé avoir été une société étrangère affiliée contrôlée de l'autre contribuable immédiatement avant le moment donné,

(ii) le montant visé par règlement est à inclure dans le revenu étranger accumulé, tiré de biens de la société affiliée pour son année d'imposition se terminant immédiatement avant le moment donné.

[…]

Émigration

(4) Pour l'application de la présente loi, les règles suivantes s'appliquent au contribuable qui cesse de résider au Canada à un moment donné :

Fin d'année et exercice

a) lorsque le contribuable est une société ou une fiducie, les présomptions suivantes s'appliquent :

(i) son année d'imposition qui comprendrait par ailleurs le moment donné est réputée avoir pris fin immédiatement avant ce

particular time and a new taxation year of the taxpayer shall be deemed to have begun at the particular time, and

moment et sa nouvelle année d'imposition, avoir commencé à ce moment,

(ii) for the purpose of determining the taxpayer's fiscal period after the particular time, the taxpayer shall be deemed not to have established a fiscal period before the particular time;

(ii) aux fins de déterminer l'exercice du contribuable après le moment donné, le contribuable est réputé ne pas avoir établi d'exercice avant ce moment;

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-298-18
STYLE OF CAUSE:	LANDBOUWBEDRIJF BACKX B.V. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 30, 2019
REASONS FOR JUDGMENT BY:	RIVOALEN J.A.
CONCURRED IN BY:	NADON J.A. LOCKE J.A.
DATED:	DECEMBER 12, 2019

APPEARANCES:

Sean C. Flaherty Graham Morton	FOR THE APPELLANT
Joanna Hill	FOR THE RESPONDENT

SOLICITORS OF RECORD:

McKenzie Lake Lawyers LLP London, Ontario	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT