Docket: 2013-4143(IT)G

BETWEEN:

FORD CREDIT CANADA LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 19 and 20, 2015, at Toronto, Ontario.

Before: The Honourable Associate Chief Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Daniel Sandler Allison Blackler
Counsel for the Respondent:	Donna Dorosh Patricia Lee

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2005 taxation year is dismissed, with costs.

Signed at Ottawa, Canada, this 6th day of January 2016.

"Lucie Lamarre"

Lamarre A.C.J.

Citation: 2016 TCC 1
Date: 20160106
Docket: 2013-4143(IT)G

BETWEEN:

FORD CREDIT CANADA LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre A.C.J.

[1] The issue in this appeal is whether a purported consequential assessment issued on December 19, 2011 for the 2005 taxation year is statute-barred. This turns on whether the assessment was properly issued pursuant to subsection 152(4.3) of the *Income Tax Act* (**ITA**), which reads as follows:

> (4.3) **Consequential assessment.** Notwithstanding subsections (4), (4.1) and (5), if the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or if the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the particular year, reassess the tax, interest or penalties payable by the taxpayer, redetermine an amount deemed to have been paid or to have been an overpayment by the taxpayer or modify the amount of a refund or other amount payable to the taxpayer, under this Part in respect of the subsequent taxation year, but only to the extent that the reassessment, redetermination or modification can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.
>
> [Emphasis added.]

[2] The facts underlying this appeal are summarized in a Partial Agreed Statement of Facts, which is attached at the end of these Reasons for Judgment.

[3] In a nutshell, by reassessment dated July 9, 2009, the Minister of National Revenue (**Minister**) included in the appellant's income for the 2004 taxation year various amounts, some of which had been initially reported in the appellant's income for the 2005 taxation year. The issue for most of these amounts came down to timing. The amounts in question included deferred proceeds on securitization transactions and subvention accretion income, totalling $76,673,532, which the Minister subsequently removed from income for the 2005 taxation year by reassessment dated June 21, 2010. The deferred proceeds and subvention accretion income, along with a few other amounts, were referred to as a "T2S(1) Securitization Adjustment" in the reassessment for 2005. Though there were other adjustments made in the reassessment for 2005, they are not material.

[4] In all, the reassessment for 2004 added to income amounts totalling $237,608,206 and removed from income amounts totalling $21,312,655.

[5] The appellant filed notices of objection for both years.

[6] For 2004, the appellant disputed certain adjustments in the reassessment and requested an additional deduction of $5,681,266, which it had requested during the audit but the request was not processed. The total reduction to taxable income sought by the appellant amounted to $198,405,337.

[7] For 2005, the appellant did not dispute the T2S(1) Securitization Adjustment but requested, in the event that its 2004 income was ultimately changed on appeal so that the amount of non-capital losses necessary to reduce 2004 taxable income to $100 was reduced, that its non-capital losses be applied in the order they arose to reduce 2004 taxable income to $100 and to reduce 2005 taxable income to $100 (2005 Notice of Objection, paragraph 17, Exhibit A-1, Tab 16, page 278).

[8] The Notices of Objection were handled by Ms. Leslie Patrick, who acted in both files as the Canada Revenue Agency (**CRA**) appeals officer. On December 3, 2010, she wrote to the appellant to advise that she had been assigned to the case (Exhibit A-1, Tab 17).

[9] On June 20, 2011, Ms. Patrick, on behalf of the CRA Appeals Division, sent a letter to the appellant offering to settle the objections in respect of the 2004 and 2005 taxation years on the terms set out in that letter (mainly that the Minister would accept all of the appellant's adjustments for 2004), conditional on the appellant waiving its right of objection and appeal in respect of 2004 and withdrawing its notice of objection in respect of 2005 (Exhibit A-1, Tab 23).

[10] The appellant responded by letter dated June 30, 2011 requesting an explanation of the principles underlying the CRA Appeals Division position regarding the settlement offer (Exhibit A-1, Tab 24).

[11] An explanation of the CRA's position was provided to the appellant in a letter dated July 14, 2011 and signed by Ms. Patrick, the CRA appeals officer (Exhibit A-1, Tab 25). Ms. Patrick stated in the last three paragraphs of that letter:

> . . .
>
> There are no securitization issues in dispute for the 2005 taxation year. However, if the 2004 reassessment is vacated by the Appeals Division there will be corresponding consequential adjustments to 2005, which should also address your concerns regarding the non-capital losses.
>
> The basis for the proposal is our interpretation of the facts presented. Accordingly, our settlement offer is for the 2004 taxation year only. The Canada Revenue Agency will continue to review, audit, and if applicable reassess, securitization transactions and other issues in 2006 and subsequent taxation years.
>
> If you would like to discuss this matter further please do not hesitate to contact the undersigned.

[12] By letter dated August 19, 2011, the appellant requested clarification of certain points in order to be able to respond effectively to the CRA's proposal and advance settlement discussions (Exhibit A-1, Tab 26). The appellant raised, among others, the following question: ". . . does the CRA Appeals division, in the ordinary course of adjudicating appeals under subsection 165(3) of the Income Tax Act, intend to accept FCCL's [Ford Credit Canada Limited] objection to the 2004 year and to vacate the current assessment?" The appellant then terminated the letter by saying that it required clarification as to the procedural implications the CRA's offer had for its objections.

[13] By letter dated August 26, 2011, the CRA appeals officer responded to the appellant. Ms. Patrick summarized her understanding of the appellant's questions raised in its letter dated August 19, 2011. As this letter is crucial in the present appeal, it is worth reproducing it in its entirety:

> Ford Credit Canada Limited
> The Canadian Road
> Oakville, Ontario L6J 5C7
>
> *Our file/Notre référence*
> L. Patrick 430-2-0
> 416-952-1068
> GB11117120 8200

GB11117120 9146

Attention: Norman Baxter, Tax Director

August 26, 2011

Dear Mr. Baxter:

RE: Ford Credit Canada Limited
Business Number – 101842557RC0001
Notices of Objection for December 31, 2004 and 2005 Taxation Years

---

Thank you for your letter dated August 19, 2011. It is our understanding that you want to know whether or not the Canada Revenue Agency's (the "CRA") Appeals Division agrees with your position regarding the "retained interest". In addition, you want to know whether the basis for our decision is applicable to subsequent taxation years, and why the Appeals Officer has sent you a settlement offer.

It is our position that the net present value of retained interest is an add-back on schedule one (T2SCH1) of the corporate income tax return. However, because we do not agree with all of the CRA Audit Division's adjustments, we are vacating the 2004 reassessment in dispute.

You have referred to subsection 165(3) of the *Income Tax Act* (the Act"). This subsection requires that the Minister, upon receiving a Notice of Objection, must with all due dispatch reconsider the assessment and either vacate, confirm or vary the assessment or reassess. In order to achieve our objective, the Appeals Division occasionally uses "settlement agreements" to resolve certain cases that are not decided 100% in favour of either the CRA or the taxpayer. In this case, a settlement offer was determined to be the most effective way to ensure that all parties are aware that the Appeals Division does not entirely agree with FCCL's position. Further, that the basis for our decision applies only to the years under objection.

Specifically, the review completed by the Appeals Division was for the 2004 and 2005 taxation years. Our review was limited to the years under objection. We cannot provide any comments regarding subsequent taxation years.

The use of the waivers, for the purposes of settlement is to ensure that all parties have a clear understanding that, although we do not fully support your position, the reassessment will be vacated. In addition, our decision applies to the 2004 taxation year only.

As a final point, it should be noted that the use of the phrase "without prejudice" is a standard practice for all of our settlement offers.

> We look forward to discussing the issue further. Please telephone the undersigned to arrange a mutually satisfactory date to meet at our office in Scarborough, Ontario.
>
> Yours truly,
>
> L. Patrick
> Appeals Officer
>
> [Emphasis added.]

[14] This letter is the crux of the issue in the present case. The appellant is of the view that the Minister vacated the July 9, 2009 reassessment (for the 2004 taxation year) and communicated this decision to the appellant in the above letter of August 26, 2011, thereby discharging her obligation to dispose of the objection under subsection 165(3) of the ITA, which reads as follows:

> **Objections to Assessments**
>
> . . .
>
> (3) **Duties of Minister** On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

[15] The appellant is of the view that, when the CRA stated in the letter that, "because we do not agree with all of the CRA Audit Division's adjustments, we are vacating the 2004 assessment in dispute", the CRA was making a statement that, on reconsidering the July 9, 2009 reassessment, it had decided to vacate it, and the appellant was notified of that decision by that letter. In the appellant's view, the reference to subsection 165(3) in the following paragraph of the letter confirms that the decision had been taken by the Minister to vacate the 2004 reassessment, which was in dispute at that time.

[16] If the appellant proves to be right in that interpretation, it would follow that the December 19, 2011 reassessment issued for 2004 was not issued pursuant to subsection 165(3) of the ITA as the matter would already have been disposed of by the letter dated August 26, 2011, and therefore that reassessment would have been issued after the normal reassessment period, which expired on July 13, 2009 for 2004, and consequently would be statute-barred.

[17] The appellant further argues that the Minister did not have the authority to issue a consequential reassessment pursuant to subsection 152(4.3) of the ITA for the 2005 taxation year as this provision does not provide for the issuance of a consequential reassessment as a result of the Minister vacating a reassessment under subsection 165(3). (The appellant argues that the decision to vacate an assessment is not an "assessment or a decision on an appeal", which is a precondition found in the first sentence of subsection 152(4.3) for the exercise of the Minister's right to issue a consequential reassessment.)

[18] As a result, the appellant argues, the December 19, 2011 reassessment for 2005 could not have been issued pursuant to 152(4.3) and was therefore likewise statute-barred.

[19] The respondent, on the other hand, is of the view that the letter dated August 26, 2011 was only responding to the appellant's request (in its letter dated August 19, 2011) for clarification during the course of settlement discussions following a "without prejudice" proposal by the CRA for settlement of the objections. The respondent argues that that letter did not constitute notification of a decision to vacate the July 9, 2009 reassessment.

[20] Indeed, the respondent states that a meeting was held between representatives of the appellant and the Minister on October 18, 2011 (Exhibit A-2, paragraph 33). This meeting followed a letter sent by the appellant to Ms. Patrick on September 9, 2011 in which it requested the meeting. I note that, in that letter, the appellant requested an extension of time to respond to the CRA's settlement proposal.

[21] The respondent stated that, in the end, the settlement offer was not accepted by the appellant and that, after completing the report on objection, the CRA decided to reassess the appellant in accordance with what was proposed in the settlement offer.

[22] A letter dated November 23, 2011 and signed by the Team Leader, Appeals Division was sent to the appellant. It was stated therein that the CRA Appeals Division had completed the review of the notices of objection for the 2004 and

2005 taxation years and that the Minister was reversing the 2004 reassessment of $192,724,070, plus allowing an additional reduction of $5,681,266. It was further stated that the various consequential adjustments would increase income for the 2005 taxation year by $76,673,532 and that non-capital losses would be applied to reduce taxable income. The letter ends by saying that notices of reassessment would follow under separate cover (Exhibit A-1, Tab 31).

[23] The reassessments were issued on December 19, 2011. According to the respondent, the consequential reassessment was issued for 2005 pursuant to subsection 152(4.3) further to the reassessment issued for 2004 on the same date, following the Minister's decision on the appellant's objections pursuant to subsection 165(3).

Issue

[24] The question is therefore whether the August 26, 2011 letter was determinative and disposed of the objection, with the result that the Minister was *functus officio* and prevented from reassessing the appellant after the issuance of that letter. I do not believe so.

Analysis

[25] Since I have concluded that the August 26, 2011 letter neither vacated the July 9, 2009 reassessment nor constituted notification of a decision to vacate under subsection 165(3), it is clear that the principle of *functus officio* is inapplicable.

[26] I have come to this conclusion for two reasons.

[27] Firstly, I accept Ms. Patrick's testimony that, when she used the verb "vacate", she was using it in relation only to the amounts to which the appellant had objected. She did not mean that she would vacate the July 9, 2009 reassessment, as only part of it was in dispute. At trial, when asked about the purpose of the August 26, 2011 letter, Ms. Patrick answered as follows:

> This is an extension of the July letter, and it's just rehashing many of the same points that were stated earlier, that we are -- first of all, the taxpayer was concerned with our reference in our letter to section 165(3). So we simply indicated that we are -- the narrative I used is that we are vacating the 2005 reassessment in dispute. And what that simply stated was that the amounts that were in dispute would be reversed for 2004. However, we were not addressing -- and this is implicit in my understanding of the word "vacate" for the purposes of this type of an assessment, was that we were only addressing the amount -- not the entire amount that was audited or that was reassessed by the audit division.

[Emphasis added.]

[Transcript, volume 1, pages 61-62]

[28] In the above passage, Ms. Patrick probably meant to refer to the 2004 reassessment rather than the 2005 reassessment.

[29] Ms. Patrick's explanation of the purpose of the letter makes sense in context. The appellant did not object to all of the adjustments made in the July 9, 2009 reassessment and, correspondingly, in the settlement offer dated June 20, 2011, the Minister did not offer to reverse all the adjustments in the reassessment (i.e., to vacate the reassessment). The Minister offered to reverse only the adjustments to which the appellant had objected.

[30] Secondly and alternatively, even if I were to accept that the use of the verb "vacate" in the August 26, 2011 letter was a reference to vacating under subsection 165(3), the letter merely explained what the Minister was willing to do if the settlement offer was accepted. The offer was never accepted by the appellant.

[31] That the letter only offered to "vacate" the reassessment as part of a settlement is clear from the text of the letter and the context in which it was sent. In the same letter, Ms. Patrick wrote that "although we do not fully support your position, the reassessment will be vacated" [emphasis added]. The future tense means that the assessment had not yet been vacated.

[32] As for the context, the August 26, 2011 letter was written as part of an ongoing settlement discussion. In particular, it was written in response to the appellant's request for clarification as to how the offer would affect post-2004 years and as to what the procedural implications of the offer would be for its objections.

[33] It is also clear that the appellant never accepted the offer. In response to the August 26, 2011 letter, the appellant, by letter dated September 9, 2011, requested an extension of time to provide an answer to the offer. The parties met afterwards for further discussion, but ultimately did not settle.

[34] I therefore conclude that the August 26, 2011 letter signed by Ms. Patrick was not notification of a decision to vacate nor did the letter itself vacate under subsection 165(3) the July 9, 2009 reassessment.

[35] This conclusion is sufficient to dispose of the appeal. On the basis of this conclusion, I find that the Minister's decision on the objection was reflected in the December 19, 2011 reassessment for 2004, which opened the door to the consequential reassessment issued on the same date for 2005.

[36] As a result, I will not have to determine whether a consequential reassessment may result from a decision by the Minister to vacate an assessment for a previous year.

[37] The appeal is dismissed, with costs.

Signed at Ottawa, Canada, this 6th day of January 2016.

"Lucie Lamarre"

Lamarre A.C.J.

A-2

Court File No. 2013-4143(IT)G

TAX COURT OF CANADA

BETWEEN:

FORD CREDIT CANADA LIMITED

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

PARTIAL AGREED STATEMENT OF FACTS

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Counsel for the Respondent

PARTIAL AGREED STATEMENT OF FACTS

For the purposes of the appeal in Tax Court File No. 2013-4143(IT)G only, the Appellant and the Respondent agree to the following facts:

The Appellant

1. Ford Credit Canada Limited ("FCCL") is an indirect wholly-owned subsidiary of Ford Motor Company ("Ford"). FCCL is a "sister company" to Ford Motor Company of Canada, Limited ("Ford Canada"), a resident of Canada for purposes of the *Income Tax Act* (the "Act") and a wholly-owned subsidiary of Ford.

2. During its 2004 and 2005 taxation years, FCCL was a "taxable Canadian corporation" within the meaning of subsections 248(1) and 89(1) of the Act with a taxation year ending December 31 and a "large corporation" within the meaning of subsection 225.1(8) of the Act.

3. FCCL's office address is The Canadian Road, Oakville ON L6J 5E4.

The Assessment under Appeal

4. On December 19, 2011, the Canada Revenue Agency ("CRA") sent to FCCL a document titled "Notice of Reassessment" pertaining to its Part I tax payable for its 2005 taxation year (such notice referred herein as the "2005 Part I Reassessment in Issue"[1]).

[1] FCCL does not admit that such notice constitutes a valid reassessment of Part I tax under the Act.

11. For financial statement purposes in 2002 to 2005, FCCL reported a discounted estimate of the Deferred Proceeds as an asset.

12. In filing its corporate tax returns for 2002 to 2004, FCCL reported as income the upfront lump sum payment received on the disposition of a RSC to a SPV, but did not include any amount on account of the Deferred Proceeds at the time of the disposition. FCCL reported the Deferred Proceeds in its income for tax purposes when the SPV became legally obligated to pay FCCL specific amounts in accordance with the specific agreement with the SPV.

13. FCCL reported a loss for tax purposes on the disposition of each RSC.

14. RSCs sold by FCCL were subject to certain "subvention" arrangements with Ford Canada under which Ford Canada agreed to pay an amount to FCCL to compensate it for below-market interest rates on RSCs. These below-market financing arrangements are an important part of Ford Canada's marketing of its vehicles.

15. The amount of the subvention income recognized for accounting purposes at the time of a securitization is referred to as a "Subvention Pullahead".

16. FCCL reported the Subvention Pullahead amount in its income for financial accounting purposes, in the year of the securitization sale, but did not include such income at that time for tax reporting purposes.

Assessment History for FCCL's 2004 Taxation Year

17. On July 12, 2005, the CRA notified FCCL that no tax was payable under Part I of the Act for its 2004 taxation year (the "Original 2004 Part I Notification"). The document containing the notification, titled "Corporation Notice of Assessment", assessed FCCL's Part I.3 tax to be $888,057. Both the notification under Part I and the assessment under Part I.3 were consistent with FCCL's original filed position.

18. On July 9, 2009, following a CRA audit, the Minister reassessed the Part I tax payable in respect of FCCL's 2004 taxation year (the "2004 Part I Reassessment Following Audit") and added amounts to FCCL's income totaling $237,608,206 and deducted amounts from FCCL's income totaling $21,312,655. The adjustments increasing FCCL's income included, among others, the following items (as described on the T7W-C relating to the 2004 Part I Reassessment Following Audit): "Subvention income" of $109,857,849; "Reverse Schedule 1 securitization deduction" of $81,474,335; "Bad Debt Expense" of $5,586,862; and "Credit Loss Reserve" of $9,567,458. The reductions included "Subvention Accretion" of $13,762,433. FCCL's Part I tax assessed pursuant to the 2004 Part I Reassessment Following Audit was $22. In the same document, the CRA reassessed FCCL's Part I.3 tax payable, reducing it by $1 to $888,056.

19. By the 2004 Part I Reassessment Following Audit, the Minister included in FCCL's income the amount of $76,673,532 relating to amounts that FCCL reported in income in the 2005 taxation year with respect to the securitization arrangements (Deferred Proceeds) and with respect to the subvention arrangements (Subvention Pullahead).

20. FCCL filed a notice of objection with respect to the Part I tax assessed pursuant to the 2004 Part I Reassessment Following Audit within the prescribed time period disputing only the specific adjustments noted in paragraph 18 above.

Assessment History for FCCL's 2005 Taxation Year

21. FCCL's initial assessment of Part I tax for its 2005 taxation year was issued by the CRA on July 17, 2006 (the "Original 2005 Part I Assessment"). Under the Original 2005 Part I Assessment, FCCL's Part I tax was assessed as $16,553,253. The same document, titled "Corporation Notice of Assessment", also assessed FCCL's Part I.3 tax as $347,985. Both the assessment under Part I and the assessment under Part I.3 were consistent with FCCL's original filed position.

22. On June 21, 2010, following a CRA audit, the Minister reassessed FCCL's 2005 taxation year (the "2005 Part I Reassessment Following Audit") and, among other adjustments, reduced FCCL's income by the amount of $83,283,119, referred to on the T7W-C as "T2S(1) Securitization Adjustment". This adjustment included (amongst other items) a reduction of $76,673,352, comprised of "Subvention Pullahead" ($53,884,612), "I/O Excess Servicing" ($30,352,059), and "Subvention Accretion" $7,563,139. FCCL's Part I tax assessed pursuant to the 2005 Part I Reassessment following audit remained $22.

23. FCCL had included the $76,673,532 referred to in the preceding paragraph in income in its 2005 taxation year and the Minister had removed and included that amount in FCCL's income for the 2004 taxation year as part of the adjustments made in the 2004 Part I Reassessment Following Audit.

24. FCCL filed a notice of objection with respect to the Part I tax assessed in the 2005 Part I Reassessment Following Audit, within the prescribed time period. In the notice of objection, FCCL did not object to the reduction referred to in the preceding paragraphs as "T2S(1) Securitization Adjustment".

Following the filing of the Notices of Objection

25. By letter dated December 3, 2010, Leslie Patrick (the "CRA Appeals Officer") wrote to FCCL on behalf of the CRA Appeals Division to advise that the notices of objection in respect of 2004 and 2005 had been assigned to her.

26. On February 17, 2011, the CRA sent two documents to FCCL, each titled "Corporation Notice of Reassessment", with respect to FCCL's 2004 and 2005 taxation years, in each case adjusting only the provincial tax liability in Nova Scotia and British Columbia.

27. In order to protect its position in objecting to the 2004 Part I Reassessment Following Audit and the 2005 Part I Reassessment Following Audit, as suggested by the CRA in its letter to FCCL dated February 21, 2011 and signed by the CRA Appeals Officer, FCCL filed notices of objection on April 18, 2011. These notices of objection were identical to those filed with respect to the 2004 Part I Reassessment Following Audit and the 2005 Part I Reassessment following Audit.

28. By letter dated June 20, 2011 and signed by the CRA Appeals Officer, the CRA offered to settle the objections in respect of the 2004 and 2005 taxation years on the terms set out in that letter, conditional on FCCL waiving its rights of objection and/or appeal in respect

of the 2004 taxation year and withdrawing its notice of objection in respect of the 2005 taxation year.

29. FCCL responded by letter dated June 30, 2011 requesting an explanation of the CRA Appeals Division's position regarding the settlement offer.

30. An explanation of the CRA's position was provided to FCCL in a letter dated July 14, 2011 and signed by the CRA Appeals Officer.

31. By letter dated August 19, 2011, FCCL requested clarification of certain points.

32. By letter dated August 26, 2011 and signed by the CRA Appeals Officer, the CRA responded to FCCL. The August 26, 2011 letter states in part that "because we do not agree with all of the CRA Audit Division's adjustments, we are vacating the 2004 reassessment in dispute".[2]

33. FCCL and the CRA exchanged further letters on September 9, 2011 and September 27, 2011 and on October 18, 2011, FCCL and its advisors met with the CRA Appeals Officer and her Team Leader, Abe Frisz.

34. By letter dated November 23, 2011, the CRA (per Abe Frisz, Team Leader, Appeals Division) wrote to FCCL advising that the CRA would be reassessing FCCL's 2004 and 2005 taxation years. The November 23, 2011 letter states in part that "the Minister of National Revenue is reversing the 2004 reassessment of $192,724,070, plus an additional

[2] The Respondent denies that such letter or any part of it, including the excerpt, vacated the 2004 Part 1 Reassessment following Audit or was notice of a decision or action that vacated the said reassessment.

amount of $5,681,266. Further, the respective consequential adjustments will increase income for the 2005 taxation year by $76,673,532."

35. On December 19, 2011, the CRA issued a document titled "Corporation Notice of Reassessment" in respect of the Part I tax payable in FCCL's 2004 taxation year (such notice referred herein as the "December 19, 2011 Reassessment for 2004"[3]).

36. The T7W-C related to the December 19, 2011 Reassessment for 2004 shows adjustments to FCCL's net income for 2004 that reverse the income inclusions and deductions in the 2004 Part I Reassessment Following Audit described in paragraph 18 and also shows an additional deduction of $5,681,266 and, in order to leave FCCL's taxable income at $100, reduced the amount of the non-capital loss carried over from 1999, as requested by FCCL in its Notice of Objection filed in respect of the 2004 Part I Reassessment Following Audit. The amount of Part I tax shown on the December 19, 2011 Reassessment for 2004 was $22.

37. The CRA audit adjustments in respect of Part 1 tax for FCCL's 2004 taxation year in the 2004 Part I Reassessment Following Audit, those adjustments objected to by FCCL, and the CRA Appeals Division's adjustments in the December 19, 2011 Reassessment for the 2004 taxation year are summarized in Schedule "A" attached.

38. The CRA processed the December 19, 2011 Reassessment for 2004 and FCCL did not object to the December 19, 2011 Reassessment for 2004.

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[3] FCCL does not admit that such notice constitutes a valid reassessment of Part I tax under the Act.

39. On December 19, 2011, the CRA also issued the 2005 Part I Reassessment in Issue (described in paragraph 4 above).

40. The T7W-C related to the 2005 Part I Reassessment in Dispute shows adjustments to FCCL's net income for 2005 that add the amounts that the CRA had deducted in the 2005 Part I Reassessment Following Audit described in paragraph 22, resulting in an aggregate increase to income of $76,673,532 and, in order to leave FCCL's taxable income at $100, increased the amount of the non-capital loss carried back from 2007, as requested by FCCL in its Notice of Objection filed in respect of the 2005 Part I Reassessment Following Audit. The amount of Part I tax shown on the 2005 Part I Reassessment in Dispute was $22.

DATED this 19 day of October, 2015 in the City of Toronto.

Daniel Sandler
Counsel for the Appellant

Donna Dorosh
Counsel for the Respondent

FORD CREDIT CANADA LIMITED v. HMQ 2013-4143(IT)G
SCHEDULE A – PARTIAL AGREED STATEMENT OF FACTS

2004 Taxation Year

	Audit Adjustments RAP July 9/09	Adjustments disputed/objected to by FCCL	Appeals Adjustments Dec. 19/11
Net Income as previously assessed	$96,750,652		$313,046,203
Add:			
Reduction of CCA claimed	13,620,595		
ACG13 Derivative Income	9,399,634		
Reverse Sch 1 Securitization Ded. (Retained Interest)	81,474,335	**81,474,335**	**(81,474,335)**
Bad Debt (Retained Interest Credit)	5,586,862	**5,586,862**	**(5,586,862)**
Subvention Income (Pullahead)	109,857,849	**109,857,849**	**(109,857,849)**
Credit Loss Reserve	9,567,458	**9,567,458**	**(9,567,458)**
Increase Tax Reserves Deduction	8,101,473		
Deduct:			
Loan origination costs disposed	(7,550,222)		
Subvention Accretion (Subvention Pullahead)	**(13,762,433)**	**(13,762,433)**	**13,762,433**
Reserve Contra Income-FCCL requested during audit- and audit recommended adj. to appeals		**(5,681,266)**	**(5,681, 266)**
Total Reduction to Taxable Income			**(198,405,337)**
Revised Net Income for Tax Purposes	**$313,046,203**		**$114,640,866**

CITATION:	2016 TCC 1
COURT FILE NO.:	2013-4143(IT)G
STYLE OF CAUSE:	FORD CREDIT CANADA LIMITED v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATES OF HEARING:	October 19 and 20, 2015
REASONS FOR JUDGMENT BY:	The Hon. Associate Chief Justice Lucie Lamarre
DATE OF JUDGMENT:	January 6, 2016

APPEARANCES:

Counsel for the Appellant:	Daniel Sandler Allison Blackler
Counsel for the Respondent:	Donna Dorosh Patricia Lee

COUNSEL OF RECORD:

For the Appellant:

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Firm:	Couzin Taylor Toronto, Ontario

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada