SCC dismisses appeal regarding tax treatment of donated employee stock options under Québec's Taxation Act

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On November 17, 2022, the Supreme Court of Canada (SCC) released its decision in *Des Groseillers v. Québec* (*Agence du revenu*), 2022 SCC 42.

Key Takeaways

- The SCC dismissed the appeal in *Des Groseillers* in a per curiam decision, confirming the unanimous decision of the Québec Court of Appeal.
- The judgment addressed the tax treatment of donated employee stock options under Québec's *Taxation Act*, RLRQ, c. I-3. (TA) as well as general statutory interpretation principles, such as the extent to which provisions of general application apply to complete codes.
- The issue before the courts was: can a taxpayer who donates stock options to a charity under the terms of a stock option plan can claim tax credits for that donation, while declaring no employment income in connection (i.e. whether sections 50 and 54 of the TA preclude the application of section 422)?
- The SCC rejected Des Groseillers' argument that sections 47.18 and 58.0.7 of the TA form a complete code, and confirmed that section 422 of the TA may be relied upon to supplement the rules for computation of income.

Background

Mr. Des Groseillers was the head of BMTC for several years. In 2010 and 2011, Mr. Des Groseillers donated some of the options to which he was entitled under the employee stock option plan offered by BMTC. Further to an audit conducted by ARQ and declarations provided by Mr. Des Groseillers, ARQ included the fair market value (FMV) of the donated stock options as employment income and assessed accordingly. For the purposes of its calculation of the deemed advantage received by Mr. Des Groseillers, ARQ used the fair value of the options at the time of the donation (s. 422 of the TA).

Mr. Des Groseillers argued that section 422 of the TA was not applicable to the case as sections 47.18 to 58.0.7 of the TA "constitute a complete code that contains, within itself and in an exhaustive manner, all the rules for the computation of income derived from the issuance of securities to employees, as well as all the legal fictions that the legislature considered necessary to adopt in support of those rules."

- Sections 50 and 54 of the TA are found under Title II "Income or Loss from an Office or Employment," Chapter II, Division VI of the TA regarding "Agreement to issue securities to employees."
- Section 50 of the TA provides that an employee who transfers or disposes of rights under a stock option agreement referred to in article 48 of the TA, to a person with whom the employee deals at arm's length, is deemed to receive a benefit equal to the amount by which the value of the consideration for the transfer or disposition exceeds the amount paid by the employee to acquire the rights. This article resembles paragraph 7(1)(b) of the Federal *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (ITA).

Section 54 of the TA, similar to paragraph 7(3)(a) of the ITA, provides that the employee is deemed not to receive any benefit under or because of the agreement other than as provided in that division.

As for section 422, it is under Title VII "Rules Relating to Computation of Income" and addresses situations where a disposition or acquisition of property by a taxpayer is deemed to be made at FMV at the time of disposition or acquisition. It is substantially similar to paragraph 69(1)b) of the ITA.

SCC decision

The Supreme Court of Canada rejected the argument set forth by Mr. Des Groseillers that sections 47.18 to 58.0.7 of the TA form a "complete code." It held that "in the absence of clear legislative indicia to this effect," the provisions do not "constitute a code so complete and hermetic that the application of section 422 is excluded." Section 422 "concerns the omnibus rules relating to the computation of income" and therefore may be relied upon to supplement the rules for computation income provided for in Section VI of the TA.

Conclusion

In doing so, the Court reaffirmed general principles of statutory interpretation: tax legislation must be given a modern interpretation, in accordance with a textual, contextual and purposive analysis, to find a meaning that is harmonious with the "Act" as a whole.

As Justice Lebel wrote in *Placer Dome*: "[w]here, […], the provision admits of more than one reasonable interpretation, greater emphasis must be placed on the context, scheme and purpose of the Act. Thus, legislative purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision."

Considering the similarities between the relevant provisions of the TA and the ITA, the Supreme Court decision in *Des Groseillers* will likely influence the statutory interpretation of the ITA.

For more information related to tax disputes, please reach out to Natalie Goulard or Frédérique Duchesne.

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