

ISSUES

Is 1a ' #ta! 9a#n taxa7le under do
Countr8 AE

Is 1a ' #ta! 9a#n exe\$ ' t fro\$ do\$est#1 tax under
Art#1le : *(4+ of Countr8 AF; uxe\$ 7our9 treat8E

GAAR a' ' 8E

se rule #n t6e treat8E

DECISION

Ta- Court of Canada #eld:

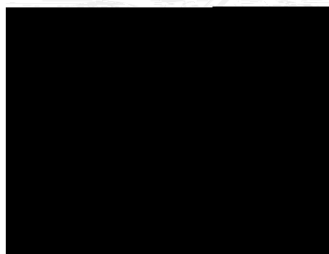
Ca ' #ta! 9a#n #s exe\$ ' t under A
treat8

GAAR does not a' ' 8

H No a?eidan1e transa1#on on t6e e?#den1e
xe\$ 7our9 <as ' r# \$ ar#8 to
#n#n9 o' erat#ons+

e : *(4+ lsele1#on of a treat8 to
o<n 1annot 7e ?#e<ed as

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



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

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

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

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

Tax 'a8er'is Ar9u\$ents

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

*(4+E

:)

Tax 'a8er'is Ar9u\$ents

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

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

:6

Tax 'a8er'is Ar9u\$ents

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

:3

Government's Arguments

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

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

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Government's Arguments

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

... to deny treaty benefits

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Government's Arguments

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

... to the interpretation
into 7 before 2 *

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Government's Arguments

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

... frustrate purposes of treaty

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Treaty Override

, So the countries ex 'treaty' provisions
do not apply at the GAAR 'rule'
'provisions of tax treaties in order
to courts from 99% treaty relief
So the countries cannot use do not apply to

2A

Thank you