Canadian Imperial Bank of Commerce v The Queen, 2013 FCA 122

Legality, Morality, and Taxation

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[see a great article by Mr Thomas McDonnell, QC, here]

It has long been recognizes that tax law does not care about the niceties that trouble other areas of law and life. All that matters for tax purposes is that some taxable event has occurred within the confines of the legislation (or convention). This is a rule rooted in fairness. There is no reason to tax a person who morally and legally increases his economic power and allow the person who does so illegally and immorally avoid paying taxes - a share of the cost of civilization. This has been an important tax rule and an important law and order rule - organized crime usually falls victim to tax law not criminal law.

In the decision above, the FCA re-affirmed this position by saying:

> [1] In quantifying a taxpayer's tax liability under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), is it ever necessary to evaluate the morality of the taxpayer's conduct? As a matter of general principle, the answer should be no. The *Income Tax Act* is intended to raise revenue for the use of the federal government. It also contains provisions intended to facilitate the distribution of social benefits according to standards established by Parliament, or to encourage or discourage certain industries or commercial practices in the public interest as perceived by Parliament from time to time. But nothing in the *Income Tax Act* expressly permits or requires the Minister of National Revenue, or the Courts, to apply the *Income Tax Act* differently depending upon the morality of the taxpayer's conduct.
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> [2] Indeed, it has long been accepted in Canada that a taxpayer who conducts an illegal business, or a business conducted unlawfully, is taxable on the profits of that business on the same principles as any other business, except to the extent that a different result is required by a specific provision of the *Income Tax Act*. Similarly, the Courts have consistently rejected the notion that the *Income Tax Act* should be interpreted or applied more generously for a taxpayer whose conduct meets a sufficiently high moral standard.
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> [3] In this case, the Crown takes the position that in determining whether a particular statutory provision (paragraph 18(1)(*a*) of the *Income Tax Act*) applies to deny the deduction of a particular expenditure in computing business income for income tax purposes, the Minister (and therefore the Courts) must first determine whether the expense was incurred because of conduct of the taxpayer that was egregious or

repulsive. That is so, according to the Crown, because if the answer is yes, then paragraph 18(1)(a) must apply to deny the deduction. The Crown's position is based on a certain *obiter dictum* in a decision of the Supreme Court of Canada. For the reasons that follow, I have concluded that the Crown has misinterpreted that *obiter dictum* and reached a conclusion that is wrong in law.

- ***Sas Ansari, JD LLM PhD (exp)***

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