Superannuation or Pension Benefits From Other Countries

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Schaub v The Queen, 2014 TCC 212

The taxpayer made voluntary contributions to a Swiss pension plan after he immigrated to Canada. He was not allowed deductions for these contributions. Once he started receiving benefits, the CRA assessed the taxpayer to include the amounts in income, with not consideration for the capital contributed.

The TCC stated that subparagraph 56(1)(a)(i) of the ITA required the inclusion in income for a taxpayer for a taxation year any amount received by the taxpayer in the year "on account or in lieu of payment of, or in satisfaction of" "a superannuation or pension benefit". Although "superannuation or pension benefit" is defined in section 248 of the ITA, it only includes any payments made to a beneficiary under a pension fund or plan.

The TCC referred to the decision of *Woods v R.*, 2010 TCC 106, paragraph 22, citing the Supreme Court of Canada in *Crown Trust Co. (McArdle Estate) v Minister of National Revenue (1965)*, 65 DTC 5176 (SCC), where it was said that "one of the characteristics of a superannuation or pension fund or plan is that it entails a person to a pension upon retirement" (para 11).

The Federal Court Trial Division in *R. v Herman (1978)*, 78 DTC 6311 (FCTD) rejected the argument that an amount was not a superannuation or pension benefit because they had not been allowed a deduction on the contribution, and noted that the ITA makes no distinction as to the origin of the funds.

The TCC in *Ruparel v Canada,* 2012 TCC 268, held that there is no provision of the ITA that provides for a deduction of the capital element of pension payments.

Relief, if any is to be found, has to be in the income tax convention between Canada and the relevant country, limiting or preventing the taxation of the amounts by Canada. In this case, the tax treaty did not limit Canada's entitlement to tax the amounts received, but limited Switzerland's jurisdiction to tax to 15% of the amounts.

The TCC held that the amounts were properly included in income, with no deduction for the capital element of the amounts.

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