Taxpayer Reliance on CRA Authorization

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Szymczyk v The Queen, 2014 TCC 380

At issue was whether the CRA could retroactively reassess taxpayers on a different basis than an authorization issued by the tax authority, or whether the CRA was limited to adopting an approach different than a past authorization only on a going-forward basis.

The court held that where the law or the facts had materially changed, the Crown is not estopped from retrospectively assessing contrary to an authorization.

FACTS

The Appellant was a senior executive at General Motors Canada ("GM") and has vehicles assigned to him. This is part of GM's product evaluation program. This resulted in income inclusions for the automobile benefit consisting of a standby charge and operating expense benefits.

GM calculated the appellant's benefit on the basis of a Taxation Authorization by Revenue Canada, permitting the benefit to be calculated using simplified method. Approximately 28 years after the authorization, the CRA conducted the first in-depth audit of these benefits, concluding that the authorization was no longer valid due to changes in the circumstances.

The Appellant and others were reassessed, and the income inclusion for automobile benefits were increased.

ANALYSIS

The TCC began by reviewing the applicable ITA provisions.

The Standby Charge is imposed by paragraph 6(1)(e) and subsection 6(2), being calculated as a percentage of the cost of the automobile to the employer. There is a reduction where the vehicle is used primarily for employment

The Operating Expense Benefit is imposed by paragraph 6(1)(k), and results in an income inclusion at a rate of $0.24 per personal kilometre (Regulations 7305.1) driven where the employer pays all or part of the operating expense of an automobile. But, where the automobile is primarily for employment, the ITA provides for an alternative calculation equal to to 1/2 of the Standby Charge.

The Appellants argued that the Crown is estopped from assessing contrary to the authorization.

There are two branched of estopple, as descried in *Ryan v Moore* , 2005 SCC 38, [emphasis added]:

> 4 **Estoppel by convention** operates where the parties have agreed that certain facts are deemed to be true and to form the basis of the transaction into which they are about to enter (G.H.L. Fridman, *The Law of Contract in Canada* (4th ed. 1999), at p. 140, note 302). If they have acted upon the agreed assumption, then, as regards that transaction, each is estopped against the other from questioning the truth of the statement of facts so assumed if it would be unjust to allow one to go back on it (G.S. Bower, *The Law Relating to Estoppel by Representation* (4th ed. 2004), at pp.7-8).
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> 5 **Estoppel by representation** requires a positive representation made by the party whom it is sought to bind, with the intention that it shall be acted on by the party with whom he or she is dealing, the latter having so acted upon it as to make it inequitable that the party making the representation should be permitted to dispute its truth, or do anything inconsistent with it (*Page v. Austin* (1884), 10 S.C.R. 132, at p. 164).

The court noted that estoppel cannot operate where the approval given by the CRA is contrary to law: MNR v Inland Industries Ltd., [1974] SCR 514. Latitude should be given to the approval unless it is clearly not supportable by the law.

The authorization was NOT contrary to law when it was issued but rather was a reasonable assessment of the benefits to the employees given the difficulty in separating the personal and business elements. An authorization is valid unless there are material changes in the law or facts. Here, both the law and the facts materially changed, such that the MNR is not estopped from issuing assessments contrary to the authorization.

In 1993, paragraph 6(1)(k) was added to provide a specific rule for operating expenses, and this invalidated the authorization. In addition, the program changes do what the vehicle turnover was now every three months or 12,000 km, compared to what is was (3 months or 5000 km).

However, the court noted that the Crown's assumptions did not support the amounts assessed for standby charge inclusion. The appellants were assigned four automobiles during the relevant period, and the ITA required that personal use be calculated separately for each period, but there was no assumption made as to personal use for each period. Thus, the burden of proof shifts back to the Crown: *The Queen v Loewen*, 2004 FCA 146.

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