Tax alert

Cameco decision a serious blow to the CRA's aggressive transfer pricing audits

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In his decision rendered at the Tax Court of Canada in favour of the taxpayer in Cameco Corporation v. The Queen, Justice John R. Owen rejected the audit positions relied on by the Minister and dealt a serious blow to the Canada Revenue Agency's (CRA) efforts to use the 2017 edition of the OECD's Transfer Pricing Guidelines to curb the base erosion and profit shifting (BEPS) activities of multinationals.

At issue in these proceedings were the transfer prices used by Cameco's mining operations in Canada (Cameco Canada) during its 2003, 2005 and 2006 taxation years for uranium sold to Cameco Europe S.A. (CESA), a Luxembourg subsidiary with a Swiss branch that was later transferred to a Swiss subsidiary, Cameco Europe AG (SA, Ltd.) (CEL) (collectively, CESA/CEL).

In total, the transfer pricing adjustments reassessed by the CRA would have added $484.4 million to Cameco Canada's income. Related reassessments of future taxation years could have added an additional $8 billion to Cameco Canada's income.

In the appeals, the Minister relied first on sham, second on the transfer pricing recharacterization rules (paragraphs 247(2)(b) and (d)) and lastly on the traditional transfer pricing rules (paragraphs 247(2)(a) and (c)). This was the first transfer pricing case in which the Minister relied on the recharacterization rules.

In rejecting the Minister's positions, Justice Owen concluded that:

There had been no deception or sham; the related parties did not factually represent the legal arrangements that they entered into in a manner different from what they knew those arrangements to be, nor did they factually represent the transactions created by those arrangements in a manner different from what they knew those arrangements to be. That CESA/CEL had been expressly authorized by the Swiss and European nuclear regulatory authorities to carry out the transactions certainly helped to support the taxpayer's position that the transactions were not a sham.

- There was nothing exceptional, unusual or inappropriate about Cameco Canada's decision to incorporate CESA/CEL and have the foreign affiliates execute certain arm's length transactions. To the extent this decision raises transfer pricing concerns, the traditional transfer pricing rules should address those concerns. Applying the extraordinary remedy of Canada's recharacterization rules was neither warranted nor appropriate in the circumstances.
- The results derived from applying the comparable uncontrolled price (CUP) method provided the most reliable measure of an arm's length price for uranium and did not warrant a transfer pricing adjustment under Canada's traditional transfer pricing rules because the prices charged by Cameco during the taxation years in question were well within an arm's length range.

What does this ruling mean for taxpayers? [245 kb]