lavery
Lawyers

International tax planning endorsed by the Court

November 6, 2020

In the recent decision in *Agracity Ltd. v. The Queen*[1], the Tax Court of Canada (the "**Court**") endorsed the Canadian tax consequences of business transactions between a Canadian corporation ("**Agracity**") and its Barbados affiliate ("**NewAgco-Barbados**") within a group of companies operating in the agrochemical industry (the "**Group**").

NewAgco-Barbados is an offshore company established for the purpose of negotiating and purchasing a particular herbicide (the "**Herbicide**") internationally for resale in Canada. All of NewAgco-Barbados's profits were generated by the resale of the Herbicide, which were subject to Barbados's low tax rate.

Agracity was in charge of receiving and filling orders for the Herbicide from Canadian consumers, under a service agreement with NewAgco-Barbados for the logistics, storage and transportation of the Herbicide from abroad to Canadian consumers.

The Canada Revenue Agency (the "**CRA**") attempted to allocate all of NewAgco-Barbados's profits to Agracity, relying primarily on sham transaction rules and secondarily on transfer pricing rules under subsection 247(2) of the *Income Tax Act*[2] (the "**Act**").

The Court held that the negotiation and procurement of the Herbicide by NewAgco-Barbados constituted a legitimate commercial objective and a genuine function within the Group.

It ruled in favour of Agracity in this case and confirmed that the transactions between Agracity and NewAgco-Barbados were not deceptive and did not warrant any adjustment to Agracity's profits under transfer pricing rules.

This case sheds new light on how to interpret the business role of foreign subsidiaries and the limits of the CRA's remedial authority with respect to transfer pricing provided for in the Act, making it easier for domestic businesses to implement international business structures. When properly set up and operated, these structures can provide substantial tax savings.

The decision in *Agracity v. The Queen* has not been appealed.

Our taxation team can assist you with national and international tax planning for your business transactions.

---

1. 2020 CCI 91
2. R.S.C. 1985, c. 1 (5th suppl.);

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.