SUPREME COURT OF CANADA

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Case in Brief: *Canada v. Alta Energy Luxembourg S.A.R.L.*

Judgment of November 26, 2021 | On appeal from the Federal Court of Appeal
Neutral citation: 2021 SCC 49

The Supreme Court rules a Luxembourg company can benefit from a Canadian tax exemption due to an existing tax treaty.

An American oil and gas company created a Luxembourg subsidiary called Alta Luxembourg, which had its own subsidiary in Canada called Alta Canada. A subsidiary is a company that is owned by another company.

In 2013, Alta Luxembourg sold its shares in Alta Canada and made more than $380 million in profit. Alta Luxembourg paid taxes on the profit to Luxembourg tax authorities. In its Canadian tax return, Alta Luxembourg claimed a tax exemption on the basis that the profit was not “taxable income earned in Canada”. It supported its claim by relying on the tax treaty between Canada and Luxembourg. The agreement exempts Luxembourg companies who profit from selling shares in Canada from paying taxes as long as the shares relate to buildings and lands in Canada where the company conducts business.

The Minister of National Revenue of Canada denied the exemption and Alta Luxembourg appealed to the Tax Court of Canada.

Before the Tax Court, the Minister argued that Alta Luxembourg could not qualify for the exemption because Alta Canada did not do business on the property. The Minister also said that the only reason Alta Luxembourg existed was to sell the shares without having to pay taxes to Canadian tax authorities. Lawyers for the Minister said that was abusive tax avoidance. The Tax Court sided with Alta Luxembourg.

The Minister appealed that decision to the Federal Court of Appeal. It also sided with Alta Luxembourg, finding no abusive tax avoidance.

The Minister then turned to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

There was no abusive tax avoidance.

Writing for the majority, Justice Côté said the Minister had not proven abusive tax avoidance. She said Canada had agreed to include exemptions for buildings and lands in the tax treaty to encourage investments by Luxembourg residents and companies. Alta Luxembourg made such an investment. As a result, it can claim a tax exemption and the anti-avoidance provisions of the Canadian *Income Tax Act* cannot be used to deny the exemption.

Breakdown of the decision: ***Majority:*** Justice Côté dismissed the appeal, holding that Alta Luxembourg can claim a tax exemption in Canada under the treaty and that the anti-avoidance provisions of the *Income Tax Act* cannot be used to deny the exemption (Justices Abella, Moldaver, Karakatsanis, Brown and Kasirer agreed). | ***Dissenting:*** Justices Rowe and Martin would have allowed the appeal. They said there was indeed abusive tax avoidance (Chief Justice Wagner agreed).

More information (case # 39113): Decision | Case information | Webcast of hearing

Lower court rulings: Lower court rulings: judgment (Tax Court of Canada) | appeal (Federal Court of Appeal)
