INCOME TAX

ASSESSMENT AND REASSESSMENT

Appeal from Tax Court of Canada (T.C.C.) decision (2016 TCC 238) dismissing appellant's appeal from assessments or reassessments for its 2002 to 2006 taxation years imposing Part XII.6 tax under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (ITA) in relation to certain amounts appellant indicated it was renouncing to certain individuals with whom it did not deal at arm's length — Canadian exploration expense (CEE), defined in ITA, s. 66.1(6), incurred to determine existence, location, extent or quality of natural resource — CEE incurred during year added to cumulative Canadian exploration expense (CCEE) — Balance in CCEE pool at end of year deductible as determined under ITA, s. 66.1(2),(3) — ITA, s. 66(12.6) permitting principal-business corporation to renounce to holders of flow-through shares certain amounts included in CEE that have been incurred by corporation — Any CEE renounced to shareholder deemed to be CEE of that person — This allowing person to add CEE to their CCEE account, to claim deduction based on balance of CCEE — ITA, s. 66(12.66) deeming corporation to have incurred certain CEE (as set out in ITA, s. 66(12.66)(b)) before that CEE actually incurred — Corporation, person to whom expenses renounced required to deal with each other at arm's length throughout particular year — Amount of tax imposed by Part XII.6 determined by formula set out in ITA, s. 211.91(1) — Appellant not aware that in order to realize benefit of s. 66(12.66), person to whom corporation renouncing CEE under s. 66(12.6) having to be person at arm's length — Not completing, filing return in relation to Part XII.6 tax — Audit revealing that significant amounts of CEE renounced to shareholders with whom appellant not dealing at arm's length — T.C.C. concluding that Part XII.6 imposing tax on appellant even though non-arm's length shareholders not permitted to claim deduction in previous year for CEE that appellant purported to renounce to them under s. 66(12.6) because of application of s. 66(12.66) — Whether T.C.C.'s interpretation of "purported to renounce" for purposes of ITA, s. 211.91 correct — T.C.C.'s interpretation of "purported to renounce" correct — Reference to "purports to renounce" in ITA, s. 66(12.73) amount that corporation stated that it was renouncing, hence amount that it claimed that it was renouncing — This including amounts validly renounced, amounts that appellant could not renounce because conditions of s. 66(12.66) not satisfied — Since s. 66(12.73) referring to both amount that corporation "purports to renounce", amount that corporation "can renounce", amounts that corporation "purports to renounce" cannot be restricted to only amounts that it "can renounce" — Parliament choosing to use two different expressions, not intending for the two expressions to be synonymous — Part XII.6 tax not affected by any change in amounts renounced as reflected in statement filed with Minister of National Revenue under s. 66(12.73) — Calculation of amount as set out in s. 211.91(1) based on prescribed rate of interest, not calculation of interest cost arising as result of allowing shareholders to claim CEE a year before they would otherwise be allowed to claim such CEE — Amount of interest cost calculated for each taxpayer not changing depending on which month CEE actually incurred — Part XII.6 tax not direct calculation of interest cost — No indication that Parliament intending to put parties back into same position that they would have been in if renunciations to non-arm's length shareholders would not have been made — Potential for double taxation in present case reduced if appellant could benefit from deduction in computing its income for particular year provided in ITA, s. 20(1)(nn) for any Part XII.6 tax paid in respect of that year — Parliament contemplating that purported renunciation would include renunciation that corporation claimed it was making under s. 66(12.6) because of application of s. 66(12.66) to shareholders with whom that corporation not dealing at arm's length — Meaning ascribed to "purported to renounce" in s. 211.91(1) same as meaning ascribed to "purported renunciation" in definition of "specified future tax consequence" in ITA, s. 248(1) — Appeal dismissed.

TUSK EXPLORATION LTD. V. CANADA (A-439-16, 2018 FCA 121, Webb J.A., judgment dated June 22, 2018, 23 pp.)