Date: 20171212

Docket: A-105-17

Citation: 2017 FCA 244

CORAM: **GAUTHIER J.A.**
NEAR J.A.
DE MONTIGNY J.A.

BETWEEN:

FARM CREDIT CANADA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Calgary, Alberta, on November 2, 2017.

Judgment delivered at Ottawa, Ontario, on December 12, 2017.

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: GAUTHIER J.A.
DE MONTIGNY J.A.

Federal Court of Appeal

Cour d'appel fédérale

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REASONS FOR JUDGMENT

NEAR J.A.

I. Overview

[1] The appellant, Farm Credit Canada, appeals a judgment of the Tax Court of Canada (*per* D'Arcy J.) dated February 24, 2017 (*Farm Credit Canada v. The Queen*, 2017 TCC 29 (TCC Decision)). The Tax Court found that the appellant is a "loan corporation" for the purposes of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, S.O.R./2001-171 (Attribution Regulations) and consequently dismissed the appellant's appeal of a

reassessment made under the *Excise Tax Act*, R.S.C., 1985, c. E-15. The appellant asks this Court to allow its appeal and vacate the reassessment.

II. Background

[2] The appellant is a federal Crown corporation that is wholly owned by the Government of Canada and governed by the *Farm Credit Canada Act*, S.C. 1993, c. 14. Its purpose is to enhance rural Canada by providing specialized and personalized financial services to farming operations and to enterprises that are closely related to or dependent on farming. These services include making loans to primary producers to purchase business inputs such as land and equipment, making loans to suppliers or processors who do business with primary producers, and entering into agreements with partners that act as intermediaries. The appellant competes with private financial institutions.

[3] The appellant agreed in the Statement of Agreed Facts that its principal business is the making of loans. It does not accept deposits from the public.

[4] The appellant filed its GST/HST returns for the 2008–2009, 2009–2010, and 2010–2011 annual reporting periods as a general corporation under the Attribution Regulations. The Canada Revenue Agency (CRA) reassessed the returns on the basis that the appellant was a loan corporation in 2012. The appellant appealed the reassessments to the Tax Court of Canada.

[5] The Attribution Regulations are part of what is generally referred to as the "special attribution method" (SAM Rules). The SAM Rules allocate a financial institution's activities to the province where its financial services are consumed. The SAM Rules have four components:

(1) they apply to "selected listed financial institutions" (SLFIs), (2) they require statutory adjustments to tax payable under Divisions IV and IV.1 of the *Excise Tax Act*, (3) they prohibit SLFIs from claiming input tax credits in respect of the provincial portion of the HST paid, and (4) they require SLFIs to adjust net tax for reporting periods. Ultimately, the net tax is calculated according to "attribution percentages" determined under Part 2 of the Attribution Regulations. The attribution percentages are based on the "type" of organization and differ for general corporations and loan corporations.

[6] The application of the SAM Rules is complicated by the fact that they were amended during the reporting period at issue with unusual effective dates. However, the parties are agreed as to which versions apply, thus, it is not an issue in this appeal.

III. <u>Tax Court of Canada Decision</u>

[7] The Tax Court of Canada found that the appellant is a loan corporation for the purposes of the Attribution Regulations and consequently dismissed the appellant's appeal of the reassessment made under the *Excise Tax Act* for the 2010–2011 reporting period. It quashed the appeals of the 2008–2009 and 2009–2010 reporting periods, explaining that it cannot increase the assessments because the Minister cannot appeal her own assessment. Thus, the only reporting period properly before the Tax Court was the 2010–2011 reporting period.

[8] The Tax Court found that the appellant is a SLFI and subject to the SAM Rules. SLFI is defined under subsection 225.2(1) of the *Excise Tax Act* (see Appendix). The parties do not dispute that the appellant is a SLFI.

[9] The question, rather, is its type within the general category of SLFIs. Part 2 of the SAM Rules establishes different attribution percentages for different types of SLFIs. The appellant filed its return as a general corporation and so applied the attribution percentage under subsection 23(2) of the Attribution Regulations in force during the reporting period in question, the current version (see Appendix). The CRA reassessed the appellant's annual return on the grounds that it is a loan corporation under section 11 of the Attribution Regulations that were in force during the reporting period in question (Old Attribution Regulations) (see Appendix). Thus, the question before the Tax Court was whether the appellant is a general corporation under section 23 of the Attribution Regulations or a loan corporation under section 11 of the Old Attribution Regulations. The parties agreed that if the appellant is a loan corporation for the purposes of section 11 of the Old Attribution Regulations, then the Minister's reassessment that the attribution percentage for the reporting period in question was $2,537,716.99 is correct. If, however, the appellant is not a loan corporation for the purposes of section 11 of the Old Attribution Regulations, then the attribution percentage should be calculated under the general rule for corporations under section 23 of the Attribution Regulations and would be $2,022,265.99 for the reporting period in question.

[10] The Tax Court applied the textual, contextual, and purposive approach to the interpretation of statutes outlined in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 (*Canada Trustco*) (TCC Decision at para. 119).

[11] The appellant argued that the proper definition of loan corporation is a regulated entity that makes loans funded by deposits from the public. This argument is largely based on the fact

that the legislation that governs trust and loan corporations federally and in each of the provinces, for example the *Loan and Trust Corporations Act* (Ontario), R.S.O. 1990, C. L.25, define a loan corporation as a corporation that is incorporated for the purpose of receiving deposits from the public and then lending or investing such money.

[12] The respondent countered that loan corporation, as used in the Attribution Regulations, bears its ordinary meaning—a corporation whose principal business is making loans.

A. *Text*

[13] The Tax Court found that the words loan corporation mean a corporation that makes loans and that there is nothing in the text that suggests that there are additional conditions to this definition (TCC Decision at para. 120).

B. *Purpose*

[14] The Tax Court then found that “[t]he Attribution Regulations derive their purpose from the overall purpose of the SAM Rules” (TCC Decision at para. 122) and that the purpose of the SAM Rules is to ensure that financial institutions do not choose to purchase and consume goods and services in non-participating provinces thus reducing their tax liability and potentially reducing investment in the participating provinces:

> [123] … the purpose of the SAM Rules is to determine, in a way that does not discourage the SLFI from purchasing the goods and services in the participating province, the amount of non-refundable tax an SLFI should pay at the relevant Schedule VIII provincial tax rate on goods and services consumed or used in exempt activities in a participating province. The subsection 225.2(2) formula, particularly the Attribution Percentage, is the key component of the SAM Rules that is used to accomplish this goal.

C. *Context*

[15] Finally, the Tax Court also found that the context does not support the appellant's argument that it is not a loan corporation for the purposes of section 11 of the Attribution Regulations.

[16] In support of its finding that the context does not support the appellant's argument, the Tax Court cited the principle from *R. v. McIntosh*, [1995] 1 S.C.R. 686 at 701, 36 CR (4th) 171 that the contextual approach provides no basis for the courts to engage in legislative amendment. The Tax Court referred to its recent decision in *Club Intrawest v. The Queen*, 2016 TCC 149 at para. 218, [2016] T.C.J. No. 115 where this principle was also applied.

[17] The Tax Court concluded that the Attribution Regulations do not limit the term loan corporation to institutions that accept deposits from the public and to find so would be tantamount to a legislative amendment (TCC Decision at para. 132).

[18] The Tax Court also rejected the appellant's argument that the presumption of consistent expression means that the term loan corporation is different from the phrase "person whose principal business is the lending of money" (*Excise Tax Act*, subpara. 149(1)(a)(viii)) (TCC Decision at paras. 129–131). It added that:

> [135] There are no provisions in the SAM Rules or the other provisions of the *GST Act* [*Excise Tax Act*] that define a loan corporation as being a regulated company under federal or provincial legislation. In fact, in a situation where Parliament wanted to restrict a specific type of SLFI to a regulated entity, it could do so through the provisions of subparagraphs 149(1)(a)(i) to (x) which define a listed financial institution.

As an example, the Tax Court pointed to subparagraph 149(1)(a)(ii) where the subsection limits the definition of "trust corporation" to those regulated under either federal or provincial legislation. Thus, the Tax Court found, Parliament could have similarly limited subparagraph 149(1)(a)(viii) to regulated corporations but chose not to (TCC Decision at paras. 137–38).

D. *Specific Context*

[19] The Tax Court then turned to the specific context in which the term loan corporation is used by looking at the structure of the Attribution Regulations that calculate the attribution percentage. The Tax Court noted that "the Attribution Regulations recognize that the criteria in the general rule do not provide a reasonable consumption proxy for all types of SLFIs" (TCC Decision at para. 147) and so the Attribution Regulations provide different criteria for the enumerated types of SLFIs. As regards loan corporations, the Court explained that the criteria reflect the nature of the business carried on by the entity:

> [147] The Attribution Regulations recognize that the criteria in the general rule do not provide a reasonable consumption proxy for all types of SLFIs. As a result, sections 9 to 11 of the Old Attribution Regulations and sections 24 to 38 of the New Attribution Regulations provide different criteria for various types of SLFIs.
>
> [148] The special rules in sections 9 to 11 of the Old Attribution Regulations and sections 24 to 38 of the New Attribution Regulations look at the unique nature of the business carried on by the relevant entity. As discussed previously, the formula for insurance companies, contained in section 9 of the Old Attribution Regulations and section 24 of the New Attribution Regulations, is based upon premium revenue generated from certain insurance business in the specific province. The formula for banks, contained in section 10 of the Old Attribution Regulations and section 25 of the New Attribution Regulations, is based primarily on the amount of loans and deposits generated by the business in the specific participating province, but also considers salary and wages paid to employees who work in the business in the province. The formula for trust and loan corporations, loan corporations and trust corporations, contained in section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations, is based upon gross revenue from certain loans made in the course of the business carried on in the specific participating province.

> [149] The drafters of the regulations clearly felt that the criteria used in the general rule in section 8 of the Old Attribution Regulations and section 23 of the New Attribution Regulations did not, for certain entities, provide a reasonable proxy for consumption. They determined that these entities required special criteria (TCC Decision at paras. 147–49).

It then concluded that "[c]learly, section 11 of the Old Attribution Regulations (and section 26 of the New Attribution Regulations) is attempting to estimate consumption for entities whose principal business is the lending of money" (TCC Decision at para. 152).

[20] Ultimately, the Tax Court concluded that a textual, contextual, and purposive analysis of the Attribution Regulations leads to the conclusion that the term loan corporation therein refers to a corporation whose principal business is the lending of money.

[21] Given that the appellant admitted in the Statement of Agreed Facts that its principal business is the lending of money, the Tax Court found that the appellant was a loan corporation during the reporting period in question and dismissed the appeal of the reassessment.

IV. Issue

[22] I would characterize the issue on appeal as follows:

1. Did the Tax Court of Canada err in finding that the appellant is a loan corporation for the purposes of the Attribution Regulations?

V. Standard of Review

[23] This question of statutory interpretation is a question of law and should be reviewed on the standard of correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

VI. Analysis

[24] To answer this question, I must apply the well established rule of statutory interpretation that statutes should be interpreted by conducting a unified textual, contextual, and purposive analysis (*Canada Trustco*).

A. *Text*

[25] The appellant argues that the term loan corporation has an established and accepted legal meaning and that the Tax Court erred in not applying it. It argues that loan corporation is used consistently in other federal and provincial legislation as requiring taking deposits from the public. In support of its argument, the appellant cites the *Trust and Loan Companies Act*, S.C. 1991, c. 45, s. 57; other federal legislation, including the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3; and the comparable trust and loan corporations legislation in each of the provinces, for example the *Loan and Trust Corporations Act* (Ontario). The appellant says that "[t]his established and accepted legal meaning - a regulated entity that is in the business of making loans *funded by deposits from the public* - is preferable to the ordinary meaning adopted by the Respondent" [emphasis in original].

[26] I agree with the Tax Court that the words loan corporation mean "a corporation that makes loans" (TCC Decision at para. 120). In my view, there is nothing in the term loan corporation that means anything other than a corporation that gives loans. There are no references in the text to regulated entities or to deposits.

[27] I am not persuaded that the term loan corporation has an accepted legal meaning whenever it is used in a statute other than those referred to above. The fact that the term loan

corporation is defined a certain way in a particular series of legislation does not mean that the term has an accepted legal meaning. In this case, the purpose of the federal and provincial acts cited by the appellant is to require trust and loan corporations to register in the provinces in which they operate. In my view, the intention of other legislatures in defining loan corporation a certain way and for a specific purpose does not attribute the same intention to Parliament, particularly where the purpose of the legislation in question is fundamentally different—to tax corporations in the same way regardless of where their business is located in Canada.

[28] The appellant also argues that the alleged accepted legal meaning was supported by the CRA's interpretation of loan corporation as used in section 405 of the *Income Tax Regulations*, C.R.C. c. 945. Section 4 of the Old Attribution Regulations provides that "[u]nless a contrary intention appears, words and expressions used in this Part have the same meanings as in Parts IV and XXVI of the *Income Tax Regulations*". Until 2001, the CRA interpreted section 405 in a manner consistent with the definition proposed by the appellant. In 2001, however, it changed its view and, for the past 16 years, has consistently applied the said section to corporations whose principal business is the lending of money or making of loans. In any case, it is well established that CRA interpretive documents are not binding on this Court and, in my view, this evidence is not determinative.

B. *Context*

(1) Parliament would have expressly defined the term loan corporation if it intended to limit it

[29] The context of the text of the *Excise Tax Act* and related legislation also refutes the appellant's argument that loan corporation has an established and accepted legal meaning and that the Tax Court erred in failing to apply it.

[30] The appellant cites the presumption of consistent expression that words in a statute or in statutes dealing with the same subject matter have consistent meaning. Thus, the appellant argues, "[h]ad Parliament intended that "loan corporation" be interpreted as a person whose principal business is lending money, it would have used the term 'loan corporation' in subparagraph 149(1)(a)(viii) [of the *Excise Tax Act*] or would have referred to a corporation whose "principal business is the lending of money" in the SLFI Regulations."

[31] As the Tax Court noted, the *Excise Tax Act* does precisely this when it seeks to define a financial institution as narrower than its general meaning. In subparagraph 149(1)(a)(ii)—the same paragraph in which the disputed phrase "a person whose principal business is the lending of money" is identified in subsection 149(1)(a)(viii)—trust corporations are limited to regulated entities:

149 (1) For the purposes of this Part, a person is a financial institution throughout a particular taxation year of the person if	149 (1) Pour l'application de la présente partie, une personne est une institution financière tout au long de son année d'imposition si, selon le cas:
(a) the person is	a) elle est, à un moment de l'année :
…	[…]
(ii) <u>a corporation that is licensed or otherwise authorized under the laws of Canada or a province</u> to carry on in Canada the business of offering to the	(ii) <u>une personne morale titulaire d'un permis ou autrement autorisée par la législation fédérale ou provinciale</u> à exploiter au Canada une entreprise d'offre au public de services de

public its services as a trustee,	fiduciaire,
[emphasis added]	[nos soulignements]

[32] This also rebuts the appellant's argument that the fact that loan corporation and trust corporation appear together in section 11 of the Old Attribution Regulations means that they should be interpreted consistently. The appellant argues that "[a] trust corporation is a financial institution that operates under specific federal or provincial legislation" and that "[i]t is reasonable to infer that the term "loan corporation" similarly refers to a particular type of entity with the same broad characteristics as a trust corporation, namely, being regulated to carry on business as such." In my view, this argument does not assist the appellants as subparagraph 149(1)(a)(ii) explicitly limits trust corporations to those authorized under the laws of Canada or a province while subparagraph 149(1)(a)(viii) places no such restriction on a person whose principal business is the lending of money. Subparagraph 149(1)(a)(viii) reads as follows:

149 (1) For the purposes of this Part, a person is a financial institution throughout a particular taxation year of the person if	149 (1) Pour l'application de la présente partie, une personne est une institution financière tout au long de son année d'imposition si, selon le cas :
(a) the person is	a) elle est, à un moment de l'année :
…	[…]
(viii) a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof,	(viii) une personne dont l'entreprise principale consiste à prêter de l'argent ou à acheter des titres de créance, ou les deux,

In my view, this difference only reinforces the finding that Parliament did not intend to place such a limitation on the meaning of loan corporation.

[33] Similarly, in subparagraph 149(4.02)(a)(iv) of the *Excise Tax Act*, Parliament explicitly limits corporations to those that are regulated and accept deposits from the public in a way similar to the federal and provincial legislation cited by the appellant:

149 (4.02) In determining a total under paragraph (1)(c) for a person (in this subsection and subsection (4.03) referred to as the ***depositor***), interest from another person in respect of a deposit of money received or held by the other person in the usual course of its deposit-taking business is not to be included if	149 (4.02) Est exclus du calcul du total visé à l'alinéa (1)c) pour une personne (appelée ***déposant*** au présent paragraphe et au paragraphe (4.03)) le montant des intérêts provenant d'une autre personne relativement à un dépôt de sommes que l'autre personne reçoit ou détient dans le cadre normal de ses activités en matière de prise de dépôts, si les énoncés suivants se vérifient :
(a) the other person is	a) l'autre personne est, selon le cas :
…	[…]
(iv) a corporation authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real property or investing in indebtedness on the security of mortgages or hypothecs on real property;	(iv) une personne morale qui est autorisée par la législation fédérale ou provinciale à accepter du public des dépôts et qui exploite une entreprise soit de prêts d'argent garantis sur des immeubles, soit de placements dans des dettes garanties par des hypothèques relatives à des immeubles;
[emphasis added]	[nos soulignements]

[34] Parliament has also restricted the meaning of related terms in the *Excise Tax Act* and related legislation. The term "bank", for instance, has been limited in various ways in the *Excise Tax Act* and related legislation. At subsection 123(1) of the *Excise Tax Act*, "bank means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act* [S.C. 1991, c. 46]" while it is defined as "a bank listed in Schedule I or II" in both section 2 of the *Bank Act* and

section 35 of the *Interpretation Act*, R.S.C. 1985, c. I-21. In turn, "authorized foreign bank means a foreign bank that is the subject of an order under subsection 524(1)" in the *Bank Act*.

[35] Parliament's silence in this Attribution Regulation is telling. Parliament could have defined loan corporation with a restriction limiting its meaning, and indeed has done so in the *Excise Tax Act* itself and in related legislation. In this case, it chose not to. I agree with the Tax Court that courts should not engage in legislative amendment.

(2) Parliament did not intend to create two classes of lending institutions

[36] The appellant argues that the general rule in section 8 is enough to capture its activities. I disagree. As the respondent argues, if this were the case, there would be no need for sections 9 to 13. As the Tax Court found, the context of the Attribution Regulations does not support the appellant's argument that there are two types of lending institutions with two different attribution percentages. It is worth citing the Tax Court's explanation in this respect:

> [129] I do not agree with the Appellant's argument on this point. The Appellant is suggesting that, under the Attribution Regulations, there are two groups of financial institutions whose principal business is the lending of money.
>
> [130] One group receives deposits from the public and, as a result, is a loan corporation. This group would determine its Attribution Percentage under the special rules in section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations. The second group does not receive deposits from the public and, even though their principal business is the lending of money, they are not "loan corporations". This group would determine its Attribution Percentage under section 23 of the New Attribution Regulations.
>
> [131] A contextual reading of the Attribution Regulations does not support such a conclusion. …

[37] The Tax Court also explained that the Attribution Regulations recognize that the general rule in section 8 does not provide a reasonable consumption proxy for all types of SLFIs thus prompting the need for sections 9 to 11 (see paragraph 18, above).

[38] Parliament's choice of language in section 13 of the Old Attribution Regulations (and section 39 of the Attribution Regulations) is particularly telling of its intention to separate SLFIs into subcategories in sections 8 to 12 of the Old Regulations (and sections 24 to 26 of the Attribution Regulations). Section 13 clearly refers to sections 9 to 11 of the Old Attribution Regulations as describing "types of financial institutions". Section 13 reads as follows:

13. If a particular selected listed financial institution is a corporation other than a financial institution described in any of sections 9 to 11 and one or more parts of its business for a particular period consist of operations normally conducted by any of the types of financial institutions referred to in those sections, the particular financial institution and the Minister may agree that the particular financial institution's percentage for a participating province for the particular period is the weighted average of the percentages determined	13. Lorsqu'une institution financière désignée particulière est une personne morale autre qu'une institution financière visée à l'un des articles 9 à 11 et qu'une ou plusieurs parties de son entreprise pour une période donnée consistent en activités habituellement exercées par une institution financière d'une catégorie visée à l'un de ces articles, l'institution financière et le ministre peuvent convenir que le pourcentage applicable à l'institution financière quant à une province participante pour la période correspond à la moyenne pondérée des pourcentages résultant :
(a) by applying to each such part of the business whichever of those sections refers to the type of financial institution that normally conducts the operations comprising that part of the business; and	a) de l'application, à chacune de ces parties de l'entreprise, de celui de ces articles qui vise une catégorie d'institutions financières qui exercent habituellement les activités constituant cette partie de l'entreprise;
b) by applying section 8 to the remainder of the business that does not consist of operations normally conducted by any of the types of financial institutions referred to in	b) de l'application de l'article 8 au reste de l'entreprise qui ne consiste pas en activités habituellement exercées par une institution financière d'une catégorie visée à l'un de ces

<u>those sections</u>.	<u>articles</u>.
[emphasis added]	[nos soulignements]

[39] Thus, as evidenced by Parliament's description of sections 9 to 11 outlining types of financial institutions in section 13, those sections are meant to refer to types of financial institutions based on the nature of their business. In my view, there is no indication that the financial institutions should be taxed according to their regulatory status.

C. *Purpose*

[40] As the trial judge noted, the main purpose of the SAM Rules is to discourage financial institutions from acquiring all of their inputs in non-participating provinces as this would discourage investment in participating provinces. In its reasons, the Tax Court cited the *Regulatory Impact Analysis Statement*, C. Gaz. 2013.II.1167 that accompanies the Attribution Regulations:

> … These amendments generally provide that … the methods for determining an SLFI's provincial attribution percentages, which the SLFI uses to determine its liability for the provincial component of the HST for each of the HST participating provinces, *reflect the consumption of the SLFI's financial services by residents of the province*.
>
> [emphasis in Tax Court decision]

Ultimately, without the SAM Rules, the structure would allow organizations to minimize the non-recoverable tax that they would pay. The SAM Rules address this by attributing liability for the provincial portion of the HST to the province where the financial service was consumed.

[41] Interpreting the term loan corporation as requiring deposits from the public would create a situation where some lenders, including the appellant, would have an advantage over those that do take deposits. The respondent notes, and I agree, that the appellant competes with private financial institutions that are subject to the attribution percentage for loan corporations. In my view, Parliament did not intend to give the appellant this benefit.

[42] Finally, the appellant argues that the Tax Court's interpretation of loan corporation creates an opportunity for tax avoidance. I disagree. An organization is entitled to plan its affairs in response to the law as it stands (*Inland Revenue Commissioners v. Duke of Westminster* [1936] A.C. 1; 19 TC 490). If an organization accurately reports what business it has undertaken during the year, it will be taxed accordingly. If that regime allows for organizations to plan their affairs in a way that avoids paying taxes, that is a problem for Parliament to address.

[43] Thus in my view, the Tax Court did not err in finding that the appellant is a loan corporation for the purpose of the Attribution Regulations. It considered the text, context, and purpose of the Attribution Regulations and correctly found that the term loan corporation is not limited to regulated institutions that take deposits from the public.

VII. Conclusion

[44] I would dismiss the appeal with costs fixed in the amount of $2,200, all inclusive.

"David G. Near"

J.A.

“I agree.
Johanne Gauthier J.A.”

“I agree.
Yves de Montigny J.A.”

Appendix

Subsection 225.2(1) of the *Excise Tax Act*:

225.2(1) For the purposes of this Part, a financial institution is a selected listed financial institution throughout a reporting period in a fiscal year that ends in a taxation year of the financial institution if the financial institution is

(a) a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the taxation year; and

(b) a prescribed financial institution throughout the reporting period.

[emphasis added]

225.2 (1) Pour l’application de la présente partie, une institution financière est une institution financière désignée particulière tout au long d’une période de déclaration comprise dans un exercice se terminant dans son année d’imposition si elle est, à la fois :

a) une institution financière désignée visée à l’un des sous-alinéas 149(1)a)(i) à (x) au cours de l’année d’imposition;

b) une institution financière visée par règlement tout au long de la période de déclaration.

[nos soulignements]

Subsection 23(2) of the Attribution Regulations:

Determination of percentage

23 (2) Subject to this Part, if, in a particular period, a selected listed financial institution that is a corporation has a permanent establishment in a participating province, the financial institution’s percentage for that province and for the particular period is

(a) except where paragraph (b) or (c) applies, 1/2 of the total of

Calcul du pourcentage

(2) Sous réserve de la présente partie, lorsqu’une institution financière désignée particulière qui est une personne morale a un établissement stable dans une province participante au cours d’une période donnée, le pourcentage qui lui est applicable quant à la province pour la période correspond à celui des pourcentages ci-après qui est applicable :

a) sauf en cas d’application des alinéas b) ou c), la moitié de la somme des

pourcentages suivants :

(i) the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period, and

(i) le pourcentage que représente le rapport entre, d'une part, son revenu brut pour la période qu'il est raisonnable d'attribuer à ses établissements stables situés dans la province et, d'autre part, son revenu brut total pour la période,

(ii) the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in that province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada;

(ii) le pourcentage que représente le rapport entre, d'une part, le total des traitements et salaires qu'elle a versés pendant la période aux salariés de ses établissements stables situés dans la province et, d'autre part, le total des traitements et salaires qu'elle a versés pendant la période aux salariés de ses établissements stables au Canada;

b) if its total gross revenue for the particular period is nil, the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada; and

b) si son revenu brut total pour la période est nul, le pourcentage que représente le rapport entre, d'une part, le total des traitements et salaires qu'elle a versés pendant la période aux salariés de ses établissements stables situés dans la province et, d'autre part, le total des traitements et salaires qu'elle a versés pendant la période aux salariés de ses établissements stables au Canada;

(c) if the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada is nil, the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period.

c) si le total des traitements et salaires qu'elle a versés pendant la période aux salariés de ses établissements stables au Canada est nul, le pourcentage que représente le rapport entre, d'une part, son revenu brut pour la période qu'il est raisonnable d'attribuer à ses établissements stables situés dans la province et, d'autre part, son revenu brut total pour la période.

Section 11 of the Old Attribution Regulations:

Trust and Loan Corporations	Sociétés de fiducie et de prêt
Determination of the percentage	Calcul du pourcentage
11. (1) If a selected listed financial institution is a trust and loan corporation, a trust corporation or a loan corporation, the financial institution's percentage for a particular period for a participating province in which the financial institution has a permanent establishment is, despite subsection 8(2), the percentage that the gross revenue for the particular period of its permanent establishments in the participating province is of the total gross revenue for the particular period of its permanent establishments in Canada.	11. (1) Malgré le paragraphe 8(2), le pourcentage applicable, pour une période donnée, à l'institution financière désignée particulière qui est une société de fiducie et de prêt, une société de fiducie ou une société de prêt, quant à une province participante où elle a un établissement stable, correspond au pourcentage qui représente le rapport entre, d'une part, les recettes brutes pour la période de ses établissements stables situés dans la province et, d'autre part, les recettes brutes totales pour la période de ses établissements stables au Canada.
Determination of gross revenue	Calcul des recettes brutes
(2) In subsection (1), "gross revenue for the particular period of its permanent establishments in the participating province" means, in relation to a financial institution, the total of the gross revenue of the financial institution for the particular period arising from	(2) Pour l'application du paragraphe (1), « recettes brutes pour la période de ses établissements stables situés dans la province » s'entend, en ce qui concerne une institution financière, du total de ses recettes brutes pour la période donnée provenant des sources suivantes :
(a) loans secured by lands situated in the participating province;	a) les prêts garantis par des terrains situés dans la province participante;
(b) loans, not secured by land, made to persons residing in the participating province;	b) les prêts, non garantis par des terrains, consentis à des personnes résidant dans la province;
(c) loans, other than loans secured by land situated in a province or country other than Canada in which the financial institution has a permanent establishment,	c) les prêts qui répondent aux conditions suivantes, à l'exception de ceux qui sont garantis par des terrains situés dans une province, ou dans un pays étranger, où l'institution financière a un établissement stable :
(i) made to persons residing in a	(i) ils sont consentis à des personnes

province or country other than Canada in which the financial institution does not have a permanent establishment, and

(ii) administered by a permanent establishment in the participating province; and

(d) business conducted at its permanent establishments in the participating province, other than business that gives rise to revenue in respect of loans.

[emphasis added]

résidant dans une province, ou dans un pays étranger, où l'institution financière n'a pas d'établissement stable,

(ii) ils sont administrés par un établissement stable situé dans la province participante;

d) les affaires menées à ses établissements stables situés dans la province participante, sauf celles qui donnent lieu à des recettes provenant de prêts.

[nos soulignements]

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

AN APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED FEBRUARY 24, 2017, DOCKET NUMBER 2013-4196(GST)G.

DOCKET:	A-105-17
STYLE OF CAUSE:	FARM CREDIT CANADA v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	NOVEMBER 2, 2017
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	GAUTHIER J.A. DE MONTIGNY J.A.
DATED:	DECEMBER 12, 2017

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