



[2021] 4 F.C.R. D-12

INCOME TAX

TAX AVOIDANCE

Appeal from Federal Court decision dismissing appellants' consolidated amended applications for judicial review relating to validity of three requests for information (RFIs) addressed by respondent Canada Revenue Agency (CRA) to Swiss Federal Tax Administration (Swiss authorities) — Appellants Canadian taxpayers — RFIs at issue sent to Swiss Authorities in context of audits conducted by CRA under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c.1 (Act) in relation to foreign investments, foreign income that appellants may not have properly reported in Canada — First two RFIs (Levett-Baazov RFIs) requested from Swiss authorities banking information related to accounts presumably held with private bank by appellants — Third RFI concerned audit of appellant 9179-3786 Québec Inc. (9179 Inc.), sought corporate, financial information about Swiss entity in relation to unrepaid loan made by that entity to 9179 Inc. — RFIs made pursuant to tax treaty between Canada, Switzerland, i.e. *Canada-Switzerland Income Tax Convention*, as amended by *Convention between the Government of Canada and the Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital*, further amended by *Protocol Amending the Convention between Canada and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital*, which, at Article XII, sets out "Interpretative Protocol" (Tax Convention) — Appellants contended that RFIs should have been quashed on basis that CRA (i) did not exhaust all domestic avenues to obtain information sought; (ii) based RFIs on false allegations; (iii) did not provide full, frank disclosure to Swiss authorities; (iv) illegally sought, obtained solicitor-client privileged information; (v) illegally disclosed confidential taxpayer information — Solicitor-client privilege violation issue concerning trust account ledger of lawyer for 9191 Inc.'s shareholders provided to CRA in 2017 — Appellants claimed correctness standard applied to that issue — Federal Court chose to review legality of RFIs using standard of reasonableness — Whether Federal Court chose appropriate standard of review, applied it correctly — Tax Convention's Interpretative Protocol, s. 2(b) requiring CRA to resort to RFI only "once [it] has pursued all reasonable means available under its internal taxation procedure to obtain the information" — CRA under no obligation to pursue all available domestic means to obtain the information, only all reasonable ones — This language strongly suggesting some measure of discretion in determining that all reasonable means available under Act to obtain information sought have been pursued before sending RFI to Swiss authorities — Reasonably open to CRA to proceed with RFIs at time it did — True intentions of parties to Tax Convention, pursuant to language of Article 25 thereof, to promote exchange of information to maximum extent possible, not to limit it — Issuance of Levett-Baazov RFIs, when examined in light of primary objective of Article 25, not unreasonable — Swiss Authorities aware that actual audits contemplated by Levett-Baazov RFIs covered only taxation years of 2010 to 2013, that CRA intended to extend these audits to 2014-2015 taxation years — Reasonably open to CRA, given language, primary objective of Tax Convention, Article 25, Interpretative Protocol, to include in Levett-Baazov RFIs reference to years 2014-2015 — Issuance of 9179 Inc. RFI result of reasonable exercise of discretion on part of CRA — CRA's lack of accurate language when it comes to its interest in 2014-2015 taxation years not amounting to "false" allegation, not affecting reasonableness of Levett-Baazov RFIs — No issue herein with fact that CRA provided Swiss

authorities with more information than that minimally required by Interpretative Protocol s. 2(b) — This permitted by Act, s. 241(4)(e)(xii), resulting in no breach of prohibition set out in Act, s. 241(1) — Appellants failing to establish that their rights under *Canadian Charter of Rights and Freedoms*, ss. 7, 8 engaged by issuance of RFIs — Issue of whether or not solicitor-client privileged information obtained in violation of right to professional secrecy irrelevant in circumstances of this case — Whether solicitor-client privileged information relevant to determination of RFIs' validity question of mixed fact, law — Federal Court, in reviewing RFIs' validity, chose correct standard of review, applied it properly — Appeal dismissed.

LEVETT V. CANADA (ATTORNEY GENERAL) (A-142-21, 2022 FCA 117, LeBlanc J.A., reasons for judgment dated June 17, 2022, 25 pp.)