Federal Court of Appeal | Cour d'appel fédérale

Date: 20121219

Docket: A-431-11

Citation: 2012 FCA 332

CORAM: **PELLETIER J.A.**
DAWSON J.A.
MAINVILLE J.A.

BETWEEN:

GORDON PRICE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on November 27, 2012.

Judgment delivered at Ottawa, Ontario, on December 19, 2012.

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: PELLETIER J.A.
DAWSON J.A.

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REASONS FOR JUDGMENT

MAINVILLE J.A.

Context and background

[1] This concerns an appeal from the judgment of McArthur J. of the Tax Court of Canada (the "Judge") dated October 12, 2011, rendered for the reasons cited as 2011 TCC 449 (the "Reasons").

[2] Some Air Canada pilots have elected to reside outside of Canada and have consequently sought to be taxed as non-residents for the income they receive from Air Canada. Prior to the *Sutcliffe* decision referred to below, the Minister of National Revenue (the "Minister") recognized that the income earned by a non-resident pilot in relation to a flight that departed from or arrived at a

place outside Canada was income earned outside Canada, but that any income earned in relation to a flight that departed from and arrived in Canada was income earned in Canada.

[3] This approach was challenged by certain Air Canada pilots through a test case that eventually lead to the decision of the Tax Court of Canada in *Sutcliffe v. The Queen*, 2005 TCC 812; 2006 D.T.C. 2076; [2006] 2 C.T.C. 2267 ("*Sutcliffe*"). That decision set out the principle that non-resident pilots are deemed to be working outside of Canada for those portions of the flights they pilot which are outside of Canadian airspace. After reviewing the factual situation, and considering the diverse employment duties of Air Canada pilots, their complex methods of remuneration, and their numerous employment benefits, Woods J. of the Tax Court of Canada approved in *Sutcliffe* the following rules for apportioning the remuneration of non-resident Air Canada pilots:

> (a) the income earned in relation to the portion of any flight (domestic or international) flown in Canadian airspace is income earned in Canada;
>
> (b) the income earned in relation to the portion of any flight (domestic or international) flown outside Canadian airspace is income earned outside of Canada;
>
> (c) the income which is related to specifically paid duties not related to any flight is deemed income earned in Canada or outside Canada depending on where the duties are actually performed, and
>
> (d) the remuneration not related to specific duties (such as vacation pay, sick pay, etc.) is prorated to the income earned in Canada and outside Canada as determined above, and is allocated accordingly.

[4] The appellant was a non-resident of Canada and a former Air Canada pilot who principally flew international routes. Prior to *Sutcliffe*, all income related to an international flight was deemed by the Minister to be earned outside of Canada. Under the *Sutcliffe* principles however, the income related to the time spent on an international flight in Canadian airspace is now deemed income

earned in Canada. The appellant does not challenge this aspect of the *Sutcliffe* decision, even though it does not favour his particular situation.

[5] The appellant, however, does challenge the allocation principles set out in *Sutcliffe*. Under the *Sutcliffe* principles, the allocation between income earned in Canada and outside Canada is largely based on the flying time of the pilots inside and outside Canadian airspace. The appellant rather proposes that the allocation of his income be based not only on the flying time, but also include the off-flying hours, such as layover time.

[6] Thus, in the appellant's view, the allocation between income earned in Canada and income earned outside of Canada should be calculated from the moment a pilot's duties begin with the departure of the flight to which he is assigned until the time the pilot's duties end with a return to the home base or its equivalent. The proportion between the time spent in Canada and the time spent elsewhere would then be used to allocate the income earned by a pilot for that duty schedule. Since, in the case of the appellant, much of his time was spent on layovers in foreign countries, his proposed allocation method would have the effect of greatly increasing the proportion of his income earned outside of Canada when compared to the allocation method approved in *Sutcliffe*.

[7] As a secondary and unrelated issue, the appellant also asserts that as a non-resident, the amounts he received in 1999 as disability payments under Air Canada's disability income insurance plan were not subject to any Canadian tax in light of the principles set out by the Tax Court of Canada in *Dorothy Werner Blauer v. The Queen*, 2007 TCC 706; 2008 D.T.C. 2409; [2008] 4 C.T.C. 2107 (*"Blauer"*).

The reasons of the Tax Court of Canada

[8] Many technical issues were submitted to the Judge, who reached conclusions on those issues and rendered judgment accordingly. During the course of these appeal proceedings, the parties agreed to a partial consent to judgment on all these technical issues, and this consent was filed with our Court on December 12, 2012. Consequently, only those aspects of the Judge's Reasons dealing with the two principal issues raised in this appeal need be reviewed, namely the method for allocating income earned as a non-resident Air Canada pilot, and the taxation of the payments received under Air Canada's disability income insurance plan.

[9] The Judge found that in order to successfully challenge the allocation method set out in *Sutcliffe* and used by the Minister, the appellant had to establish that his proposed method of allocation was more reasonable: Reasons at para. 26. Since the allocation method approved in *Sutcliffe* was based on the terms of the collective agreement reached between Air Canada and its pilots' association, and since that collective agreement provides that the pilots are, for the most part, paid in accordance with complex formulas tied to the minutes they are flying aircrafts, the Judge found that "the most reasonable method is the one which reflects the pay structure contained in the contract of employment": Reasons at para. 33.

[10] The Judge discarded the appellant's claim that his layover time should be counted for the purposes of the allocation. He found that although a pilot may be required to be away from home during flight assignments, he "was paid on flight time only" and it was not the intention of the parties to the collective agreement to recognize layovers for purposes of calculating income: Reasons at para. 28. He further found that any pay which may have been related to layover time had

been recognized in the collective agreement in the form of extra minutes of flying time added to the last portion of a return trip: Reasons at para. 30.

[11] Regarding the disability payments, the Judge found that the collective agreement stipulated that the monthly premium for the disability income insurance plan was entirely paid by the employer, Air Canada, and that consequently, the disability benefits received under that plan were taxable in the hands of the pilots who were Canadian residents pursuant to paragraph 6(1)(*f*) of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) (the "Act"): Reasons at para. 40.

[12] As for the non resident pilots, the Judge refused to consider himself bound by *Blauer* since that decision was made under the informal procedure set out under the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, and consequently, pursuant to section 18.28 thereof, it need not be treated as a precedent for any other case. The Judge then proceeded to discard the reasoning set out under *Blauer* and relied instead on *The Queen v. Savage*, [1983] 2 S.C.R. 428 and *Hurd v. The Queen*, [1982] 1 F.C. 554 (C.A.) ("*Hurd*") to conclude that an "income is taxable in Canada pursuant to section 115 of the Act as long as a nexus can be established with the performance of a duty in Canada" and that any "material acquisition which confers an economic benefit to the taxpayer such as a disability payment, constitute an income for the purpose of sections 3 and 115 of the Act": Reasons at para. 42. The Judge thus accepted the Minister's allocation of the disability payments between income earned in Canada and income earned outside Canada, which in the appellant's case was determined to be 50%.

The issues in appeal

[13] Though the appellant raises numerous interrelated issues in his memorandum, these can be subsumed into the three following questions:

a. Was there an appearance of bias on the part of the Judge?

b. Did the Judge err by confirming the allocation method set out in *Sutcliffe*?

c. Did the judge err in finding that the disability payments were taxable under section 115 of the Act?

The standard of review

[14] The appearance of bias on the part of a judge raises an issue of procedural fairness that is reviewed on a standard of correctness. The determination of the appropriate allocation method raises questions of mixed fact and law that are reviewed on a standard of palpable and overriding error, unless a legal question may be extricated from the facts, in which case that legal question is reviewed on a standard of correctness. Finally, the determination as to whether taxable income under the Act includes the disability payments received by the appellant requires interpreting the provisions of the Act. Questions of statutory interpretation are questions of law to be reviewed on a standard of correctness. (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paras. 8-9 and 26 to 28).

The relevant provisions of the Act

[15] Paragraph 3(*a*) of the Act sets out the applicable basic rule for computing income for a taxation year, while subsection 5(1) deals with income from an office or employment. Subsection 6(1) includes certain amounts as income from an office or employment, and paragraph 6(1)(*f*)

notably identifies amounts paid as benefits under a disability insurance plan. Finally, subparagraph 115(1)(*a*)(i) provides for the calculation of employment income earned in Canada by a non-resident. These provisions are reproduced in the schedule to these reasons.

First Issue: Allegation of bias

[16] The appellant asserts that the Judge gave the appearance that he had pre-judged the case at the start of the hearing by asking the question: "Why are we here?" In the appellant's view, this comment denoted a predisposition on the part of the Judge. The appellant adds that the Judge also showed that he was not fair and impartial in his Reasons at paras. 52 to 55, where he implied that the appellant's proposed allocation method was "manoeuvring" and an "overly aggressive manoeuvring to arrive at the lowest possible percentage for duties performed in Canada", and then suggested that the law be changed in order to tax non-resident pilots under a simpler method.

[17] The full statement of the Judge made at the beginning of the hearing gives context to his opening comment:

> "JUSTICE McARTHUR: I will just make you aware, and I am listening to everything you have to say, but I have read the pleadings and I have read *Sutcliffe*, and at this point I am wondering why we are here.
> (Appeal Book ("AB") v. 4 at p. 965-966)

[18] An inquisitive mind should not be confused with a biased mind. I can see nothing in this statement which would suggest the Judge's mind was closed. Under the circumstances, this was a most reasonable and logical question for the Judge to ask. *Sutcliffe* had been put forward as a test case, and it had been decided only five years before the hearing. It dealt with essentially the same issue as that raised by the appellant, namely the method for allocating the income of non-resident

Air Canada pilots between income earned in Canada and income earned outside Canada. The fact that the Judge was asking why the principles set out in *Sutcliffe* should be revisited five years after they were approved does not show any form of bias whatsoever, but to me is indicative of the honest efforts the Judge made to try to understand the appellant's argument in light of *Sutcliffe*. That the Judge chose to be transparent and communicate those efforts to the appellant, to me indicates that he was interested and very much receptive to any argument made. I am somewhat mystified as to how the appellant can allege an appearance of bias on such thin circumstances.

[19] The Judge did find in his Reasons that the appellant's alternative allocation method was "aggressive manoeuvring", but this finding must be understood in the overall context of the proceedings, which was to decide whether the appellant's method was more reasonable than the method set out under *Sutcliffe*. The Judge found that the *Sutcliffe* method was the most reasonable in the circumstances, and that the one proposed by the appellant was essentially based on the most aggressive method available to reduce the Canadian component of his income. Though I can understand that a litigant may be disappointed by the results of a ruling, the fact that the Judge found one method reasonable and the other unreasonable and aggressive does not show bias. On the contrary, it was the Judge's duty to evaluate the method proposed by the appellant.

[20] Finally, it is not unheard of for a judge to include in his reasons suggestions for legislative reform. Of course, such suggestions should remain rare occurrences. Here, the Judge was faced with a challenge to an allocation method which had been recently approved by the Tax Court of Canada in *Sutcliffe*. He was also bombarded by the parties with numerous complex technical issues on a whole range of issues, including flight paths and flight times between Toronto and Vancouver, and

time calculations for international flights. These complex issues were only recently settled between the parties in their partial consent to judgment filed with this Court. In this context, with the risk of continuing litigation by other Air Canada pilots challenging the time allocations for the thousands of Air Canada flights which occur each year, it was not inappropriate for the Judge to suggest legislative reform.

[21] As the Judge aptly noted at para. 55 of his Reasons, "[t]here is a serious need for a simpler method". As things now stand, a non-resident Canadian pilot flying a Canadian aircraft for a Canadian company between two Canadian destinations is nevertheless deemed to be working outside of Canada if his flight plan takes him outside Canadian airspace. Moreover, complex calculations of flight paths and flight times are required to properly determine the allocation of individual flight times inside and outside of Canadian airspace. Finally, Article 15 of the Organization for Economic Cooperation and Development *Model Tax Convention* (July 2010), provides that the remuneration derived in respect of employment exercised aboard an aircraft operated in international traffic may be taxed in the contracting state in which effective management of the airline is situated. The third paragraph of this Article 15 reads as follows:

> Notwithstanding the preceding provision of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

In these circumstances, the Judge did not show bias by pointing out that legislative reform should be considered.

Second Issue: The allocation method

[22] I have carefully reviewed the Judge's reasons, the *Sutcliffe* decision, the Air Canada pilots' collective agreement, and the evidence submitted on behalf of the appellant in this case. Here, the Judge found that the allocation method approved under *Sutcliffe* and based on the method of remuneration set out in the collective agreement should be preferred over a method using total travel time related to flight assignments. I can find no error of law or of fact in the Judge's Reasons leading to that finding.

[23] The provisions of the Air Canada pilots' collective agreement were extensively reviewed by Justice Woods in *Sutcliffe*, and it is not necessary to repeat here this review. It suffices to point out that hourly base pay, hourly pay, mileage pay, gross weight pay, overseas operation pay, etc. are all paid as a function of the time a pilot flies. In addition, many of the other components of a pilot's pay, including pay received for non-flying duties, are largely based on flying time.

[24] To put it simply, the pay system for Air Canada pilots is largely based on the minutes recognized as flying time under the collective agreement. The most appropriate method of allocating income earned in Canada from income earned outside Canada under that collective agreement should therefore also be based on flying time. This method of allocation was approved by Justice Woods in *Sutcliffe* and confirmed by the Judge in this case, and we should also confirm it here.

[25] The appellant has failed to show why we should disregard the method set out in the collective agreement in order to favour a method which is largely based on non-remunerated wait

time and layover time. I note that although this method may favour the appellant's circumstances in light of his assignments to international flights with foreign based layovers, it may well disadvantage other Air Canada pilots who have layovers in Canada. The appellant's proposed method is not based on the terms of the collective contract, nor does it ensure any greater fairness in the allocation of the income of Air Canada pilots. It should not be retained.

Third Issue: The disability payments

[26] The Air Canada pilots' collective agreement sets out in some length the details of the group disability income plan. The plan provides for a reasonable level of income protection during periods that a pilot is, for medical reasons, unable to perform his regular duties. Participation in the plan is a condition of employment, and the employer pays the total monthly premium for the related group disability income insurance plan.

[27] The benefits under the plan are captured under paragraph 6(1)(*f*) of the Act, which includes as income from an office or employment all amounts received by a taxpayer in a year which were payable on a periodic basis in respect of the loss of all or part of the taxpayer's income from an office or employment pursuant to a disability insurance plan to which the taxpayer's employer has made a contribution.

[28] The appellant however submits that such disability benefits are not taxable in the hands of non-residents. The appellant essentially relies on *Blauer* to support his position. In *Blauer* at para. 24, Justice Hershfield of the Tax Court of Canada was of the view that subparagraph 115(1)(*a*)(i) of the Act "does not include all payments that are employment income when earned by a non-resident

but rather it includes only a certain type of employment income; namely income from the performance of the duties of an office or employment." Since, in his view, disability insurance payments or wage loss replacement payments are not received in consideration of employment services rendered, they are excluded from the ambit of that subparagraph: *Blauer* at para. 16.

[29] Like the Judge, I would not follow the reasoning set out in *Blauer*.

[30] In my view, it is important to note that subparagraph 115(1)(*a*)(i) of the Act specifically refers to section 3, which itself refers to the notion of income from an office or employment. Section 3 is found in Division B of Part 1 of the Act concerning the "Computation of Income". The notion of income from an office or employment is itself further refined in subsections 5(1) and 6(1) of the Act, also found in Division B of Part 1. As such, all these provisions should be interpreted together in a manner which ensures a consistent and harmonious meaning to the notion of income from an office or employment, whether such income is earned by a Canadian resident or by a non-resident. It is indeed a well-known principle that the provisions of the Act are to be read in their entire context, and in their grammatical and ordinary sense, with the scheme of the Act as a harmonious whole, the object of the Act, and the intention of Parliament: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at para. 10; *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217 at para. 16.

[31] Under subsection 6(1), Parliament has specifically identified certain benefits and amounts which are included as income from an office or employment, including notably director's fees received in respect of, in the course of, or by virtue of an office or employment (6(1)(*c*)); amounts

allocated under an employees profit sharing plan (6(1)(*d*)); amounts paid under a sickness or insurance plan, a disability insurance plan or an income maintenance insurance plan to which the employer contributes (6(1)(*f*)); amounts payable under a salary deferral arrangement (6(1)(*i*)); automobile operating expense benefits (6(1)(*k*)); etc.

[32] I see no reason why such benefits and amounts set out in subsection 6(1) should not be included in the income of a non-resident under subparagraph 115(1)(*a*)(i) of the Act where these benefits or amounts are received or paid as a result of the duties of an office or employment performed in Canada. I note that this Court has held that since subparagraph 115(1)(*a*)(i) specifically refers to section 3 of the Act which is found in Division B of Part 1 of the Act, regard must be had to section 7 of the Act in the computation of the income of a non-resident, also found in Division B of Part 1: *Hurd*, above at pp. 557-558. As such, the same principle applies with regard to subsection 6(1) of the Act.

[33] The fact that subparagraph 115(1)(*a*)(i) refers to incomes from duties of offices and employments performed by the non-resident person in Canada does not exclude from the scope of that paragraph the benefits and amounts referred to under subsection 6(1) of the Act. Rather, the words "duties" and "performed" are simply used in this context to distinguish between incomes earned from offices or employments in Canada from those earned outside Canada.

[34] I am reinforced in this view by the second segment of subparagraph 115(1)(*a*)(i) which seeks to capture employment income earned outside Canada while the person was residing in

Canada, which second segment reads as follows: "and, if the person was resident in Canada at the time the person performed the duties, outside Canada".

[35] The appellant's interpretation of subparagraph 115(1)(*a*)(i) would exclude from taxation many of the monetary and non-monetary benefits set out in subsection 6(1) and received by a non-resident as a result of employment in Canada. Such an interpretation is not supported by the wording of subparagraph 115(1)(*a*)(i), nor is it consistent with the notion of income from an office or employment as clearly and unambiguously set out in the Act. The appellant's interpretation should consequently be discarded.

[36] In their partial consent to judgement, the parties have agreed to apply the Minister's allocation of the disability amounts between income earned in Canada and income earned outside Canada, in the event this Court finds that the payments are taxable under subparagraph 115(1)(*a*)(i) of the Act. It will not therefore be necessary to decide here the method of allocation which applies to such amounts when paid to a non-resident.

Conclusions

[37] I have rejected all the issues raised in this appeal by the appellant, and I would normally dismiss the appeal were it not for the partial consent to judgment reached by the parties. I would consequently allow the appeal and set aside the judgment of the Tax Court of Canada for the sole purpose of referring the appellant's reassessments in respect to the 1995 to 2000 taxation years back to the Minister for reconsideration and reassessment, in accordance with the facts set out in the partial consent to judgment.

[38] The Judge did not order costs in the Tax Court of Canada, and I would not disturb his decision on this matter. However, I would order costs against the appellant in this appeal.

"Robert M. Mainville"
J.A.

“I agree
J.D. Denis Pelletier J.A.”

“I agree
Eleanor R. Dawson J.A.”

SCHEDULE
Pertinent extracts from the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)

2. (1) An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

2. (1) Un impôt sur le revenu doit être payé, ainsi qu'il est prévu par la présente loi, pour chaque année d'imposition, sur le revenu imposable de toute personne résidant au Canada à un moment donné au cours de l'année.

(2) The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

(2) Le revenu imposable d'un contribuable pour une année d'imposition est son revenu pour l'année plus les ajouts prévus à la section C et moins les déductions qui y sont permises.

(3) Where a person who is not taxable under subsection 2(1) for a taxation year

(*a*) was employed in Canada,

(*b*) carried on a business in Canada, or

(*c*) disposed of a taxable Canadian property,

any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person's taxable income earned in Canada for the year determined in accordance with Division D.

(3) Un impôt sur le revenu doit être payé, ainsi qu'il est prévu par la présente loi, sur son revenu imposable gagné au Canada pour l'année, déterminé conformément à la section D, par la personne non imposable en vertu du paragraphe (1) pour une année d'imposition et qui, à un moment donné de l'année ou d'une année antérieure, a :

a) soit été employée au Canada;

b) soit exploité une entreprise au Canada;

c) soit disposé d'un bien canadien imposable.

3. The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(*a*) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a

3. Pour déterminer le revenu d'un contribuable pour une année d'imposition, pour l'application de la présente partie, les calculs suivants sont à effectuer :

a) le calcul du total des sommes qui constituent chacune le revenu du contribuable pour l'année (autre qu'un gain en capital imposable résultant de la

source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,

disposition d'un bien) dont la source se situe au Canada ou à l'étranger, y compris, sans que soit limitée la portée générale de ce qui précède, le revenu tiré de chaque charge, emploi, entreprise et bien;

5. (1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

5. (1) Sous réserve des autres dispositions de la présente partie, le revenu d'un contribuable, pour une année d'imposition, tiré d'une charge ou d'un emploi est le traitement, le salaire et toute autre rémunération, y compris les gratifications, que le contribuable a reçus au cours de l'année.

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable

(*a*) the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, ...

...

(*f*) the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan,

(iii) an income maintenance insurance plan, or

6. (1) Sont à inclure dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi, ceux des éléments suivants qui sont applicables

a) la valeur de la pension, du logement et autres avantages quelconques qu'il a reçus ou dont il a joui au cours de l'année au titre, dans l'occupation ou en vertu d'une charge ou d'un emploi, [...]

[…]

f) le total des sommes qu'il a reçues au cours de l'année, à titre d'indemnité payable périodiquement pour la perte totale ou partielle du revenu afférent à une charge ou à un emploi, en vertu de l'un des régimes suivants dans le cadre duquel son employeur a contribué :

(i) un régime d'assurance contre la maladie ou les accidents,

(ii) un régime d'assurance invalidité,

(iii) un régime d'assurance de sécurité du revenu,

(iii.1) a plan described in any of subparagraphs (i) to (iii) that is administered or provided by an employee life and health trust,

to or under which the taxpayer's employer has made a contribution, not exceeding the amount, if any, by which

(iv) the total of all such amounts received by the taxpayer pursuant to the plan before the end of the year and

(A) where there was a preceding taxation year ending after 1971 in which any such amount was, by virtue of this paragraph, included in computing the taxpayer's income, after the last such year, and

(B) in any other case, after 1971,

exceeds

(v) the total of the contributions made by the taxpayer under the plan before the end of the year and

(A) where there was a preceding taxation year described in clause (iv)(A), after the last such year, and

(B) in any other case, after 1967;

115. (1) For the purposes of this Act, the taxable income earned in Canada for a taxation year of a person who at no time in the year is resident in Canada is the amount, if any, by which the amount that would be the non-resident person's income for the year under section 3 if

(*a*) the non-resident person had no income other than

(i) incomes from the

(iii.1) un régime visé à l'un des sous-alinéas (i) à (iii) qui est administré ou offert par une fiducie de soins de santé au bénéfice d'employés,

le total ne peut toutefois dépasser l'excédent éventuel du total visé au sous-alinéa (iv) sur le total visé au sous-alinéa

(iv) le total des sommes qu'il a ainsi reçues avant la fin de l'année et :

(A) lorsqu'une de ces sommes a été, en vertu du présent alinéa, incluse dans le calcul de son revenu pour une année d'imposition antérieure se terminant après 1971, après cette année,

(B) sinon, après 1971,

(v) le total des cotisations versées par le contribuable dans le cadre du régime avant la fin de l'année et :

(A) lorsqu'il y a eu une année d'imposition antérieure, visée à la division (iv)(A), après cette année,

(B) sinon, après 1967;

115. (1) Pour l'application de la présente loi, le revenu imposable gagné au Canada pour une année d'imposition d'une personne qui ne réside au Canada à aucun moment de l'année correspond à l'excédent éventuel du montant qui représenterait son revenu pour l'année selon l'article 3:

a) si elle n'avait pas de revenu autre :

(i) que les revenus tirés

duties of offices and employments performed by the non-resident person in Canada and, if the person was resident in Canada at the time the person performed the duties, outside Canada,

des fonctions de charges et d'emplois exercées par elle au Canada et, si elle résidait au Canada au moment où elle exerçait les fonctions, à l'étranger,

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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