Dockets: 2012-950(IT)G, 2013-1251(IT)G,
2013-1252(IT)G, 2013-1253(IT)G,
2013-1254(IT)G, 2013-2961(IT)G,
and 2013-2962(IT)G

BETWEEN:

CIT GROUP SECURITIES (CANADA) INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Written Submissions Regarding Costs

Before: The Honourable Justice John R. Owen

Participants:

Counsel for the Appellant:	Edwin G. Kroft, Q.C., Deborah J. Toaze, Paul K. Tamaki
Counsel for the Respondent:	Elizabeth Chasson, Darren Prevost, Leonard Elias

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ORDER

UPON reading the parties’ submissions on costs;

In accordance with the attached Reasons for Order it is ordered that:

1. The Appellant be awarded a lump sum of $1,100,000 in lieu of taxed costs for counsel fees.

2. The disbursements claimed by the Appellant in respect of these appeals shall be taxed in accordance with the *Tax Court of Canada Rules (General Procedure)*, subject to the proviso that the award of costs to the Appellant for disbursements associated with obtaining expert reports for these appeals shall not exceed $175,000.

Signed at Ottawa, Canada, this 11th day of April 2017.

"J.R. Owen"

Owen J.

Citation: 2017 TCC **86**
Date: 2017**0524**
Dockets: 2012-950(IT)G, 2013-1251(IT)G,
2013-1252(IT)G, 2013-1253(IT)G,
2013-1254(IT)G, 2013-2961(IT)G,
and 2013-2962(IT)G

BETWEEN:

CIT GROUP SECURITIES (CANADA) INC.,
Appellant,

and

HER MAJESTY THE QUEEN,
Respondent.

AMENDED REASONS FOR ORDER

Owen J.

[1] The Appellant was successful in its appeals of the reassessment of its 2003, 2004, 2005, 2006, 2007, 2008 and 2009 taxation years (collectively, the "Appeals"). The Appeals were heard on common evidence. At the time of my judgment, I gave the parties 30 days to make submissions as to costs. I subsequently allowed the Respondent to make further submissions in response to the submissions of the Appellant.

[2] The Appellant is asking for a lump sum costs award (including disbursements) of $2,730,258.32. The Appellant describes the computation of the award as follows:

> The Proposed Cost Award, sought by the Appellant, consists of a number of components:

> (a) Lump Sum for the Period from October 22, 2011 to August 10, 2015: An amount of $1,351,793.37, based on 40% of Blakes' principal timekeepers' legal fees ($3,379,483.42) incurred from October 22, 2011 up to and including August 10, 2015 (the date of service of the Walwyn Expert Report, as defined later in this Submission, a copy of which is found in Tab 6 of this Submission); PLUS
>
> (b) Lump Sum for the Period from August 11, 2015 to July 4, 2016: An amount of $499,690.80, based on 80% of Blakes' principal timekeepers' legal fees ($624,613.50) incurred from August 11, 2015 (the day after service of the Walwyn Expert Report) to July 4, 2016 (the date of the Judgment); PLUS
>
> (c) Disbursements: $360,577.23, namely an amount for all disbursements (described in Part V of this Submission) incurred by Appellant from October 22, 2011 to July 4, 2016; PLUS
>
> (d) Additional Lump Sum Amount for Costs for this Submission: $25,600, calculated as 80% of estimated legal fees ($32,000) incurred to produce this Submission, plus all related disbursements ($400); PLUS
>
> (e) HST: $492,596.92 (based on (1) the total legal fees of $4,036,097 referred to in paragraphs 9(a), (b) and (d) above; (2) less any HST that was claimed as input tax credits; and (3) those of the disbursements referred to in paragraph 9(c) that were taxable);
>
> (f) Any other or further relief that this Honourable Court may grant.

[3] The 80% factor is the same factor as that applied by subsection 147(3.5) of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") in cases where subsection 147(3.1) or (3.2) of the Rules applies. The Appellant concedes that subsection 147(3.1) of the Rules does not apply in this case because the Appellant's offer was not made at least 90 days before the hearing as required by paragraph 147(3.3)(b) of the Rules.

[4] The Respondent submits that the costs should be computed for one appeal in accordance with Tariff A and Tariff B in Schedule II of the Rules (the "Tariff") plus disbursements of $23,922.15, which results in total costs of $95,919.66. Alternatively, the Respondent submits that a lump sum award should be no more than 20% to 30% of adjusted fees of $3,082,527.34 plus disbursements of $23,922.15. Ignoring the disbursements, this results in a ceiling of approximately $616,505 to $924,758.

I. <u>Analysis</u>

[5] Subsections 147(1) to (3) and (4) to (5) of the Rules state:

> 147. General Principles — (1) The Court may determine the amount of the costs of all parties involved in any proceeding, the allocation of those costs and the persons required to pay them.
>
> (2) Costs may be awarded to or against the Crown.
>
> (3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,
>
> (a) the result of the proceeding,
>
> (b) the amounts in issue,
>
> (c) the importance of the issues,
>
> (d) any offer of settlement made in writing,
>
> (e) the volume of work,
>
> (f) the complexity of the issues,
>
> (g) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,
>
> (h) the denial or the neglect or refusal of any party to admit anything that should have been admitted,
>
> (i) whether any stage in the proceedings was,
>
> (i) improper, vexatious, or unnecessary, or
>
> (ii) taken through negligence, mistake or excessive caution,
>
> (i.1) whether the expense required to have an expert witness give evidence was justified given
>
> (i) the nature of the proceeding, its public significance and any need to clarify the law,
>
> (ii) the number, complexity or technical nature of the issues in dispute, or
>
> (iii) the amount in dispute; and

(j) any other matter relevant to the question of costs.

. . .

(4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

(5) Notwithstanding any other provision in these rules, the Court has the discretionary power,

(a) to award or refuse costs in respect of a particular issue or part of a proceeding,

(b) to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or

(c) to award all or part of the costs on a solicitor and client basis.

[6] Subsection 147(1) provides the Court with a broad discretionary power to determine the amount of the costs of all parties to a proceeding, the allocation of those costs and the persons required to pay those costs.[1] Subsection 147(2) states that costs may be awarded to or against the Crown. Subsection 147(3) states that, in exercising its discretionary power, the Court may consider the factors identified in that subsection. Subsection 147(4) states that the Court may award costs with or without reference to Tariff B in Schedule II of the Rules and may award a lump sum in lieu of or in addition to any taxed costs.[2] Finally, subsection 147(5)

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[1] In *Velcro Canada Inc. v. The Queen*, 2012 TCC 273 ("*Velcro*"), Rossiter A.C.J. (as he then was) stated at paragraph 11:

> . . . The discretion in 147(1) is extremely broad - it gives the Court total discretion in terms of (1) the amount of costs; (2) the allocation of costs; and (3) who must pay them.

The broad discretionary language used in subsections 147(1) to (3) and (4) to (5) is consistent with the Court's implied authority to control its own process: R. v. *Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331 at paragraph 19, and *Minister of National Revenue v. RBC Life Insurance Co.*, 2013 FCA 50 at paragraphs 35 and 36.

[2] In *Velcro*, Rossiter A.C.J. (as he then was) emphasized the discretion of the Tax Court to awards costs without regard to the Tariff, at paragraphs 6 and 16:

> . . . The exceptional circumstances I believe he referred to in *Continental Bank* include circumstances that might justify solicitor-client costs which is most certainly outside the Tariff. To my mind, it does not take exceptional circumstances to justify a deviation from the Tariff — far from it. The authority of the Tax Court of Canada is quite clear.
>
> . . .
>
> . . . it is hard to imagine how the Tax Court of Canada's discretionary power could be broader for awarding costs given the wording in Rules 147(1), (3), (4) and (5). These particular provisions of Rule 147 really make reference to Schedule II, Tariff B a totally discretionary matter.

In *Nova Chemicals Corporation v. The Dow Chemical Company et al.*, 2017 FCA 25 ("*Nova Chemicals*"), the Federal Court of Appeal confirmed the Federal Court's discretionary power over the amount and

provides the Court with the discretion to award or refuse costs in respect of a particular issue or part of a proceeding, to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or to award all or part of the costs on a solicitor and client basis.

[7] Recently, the Federal Court of Appeal summarily described section 147 of the Rules as follows:

> . . . Briefly, Rule 147 allows the Tax Court to determine the amount of the costs of all parties to a "proceeding" (Rule 147(1)). "Proceeding" is a defined term. In Rule 2 it is defined to mean "an appeal or reference". In exercising its discretion on costs the Tax Court may consider a number of factors, including the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the "proceeding" (Rule 147(3)(*g*)) and whether any stage in the "proceeding" was improper, vexatious or unnecessary (Rule 147(3)(*i*)(i)). The Tax Court has discretion to award or refuse costs in respect of a "part of a proceeding" (Rule 147(5)(*a*)).[3]

[8] Notwithstanding the broad discretionary language used in section 147 of the Rules, the Court's discretionary power to award or to not award costs is not unfettered and must be exercised on a principled basis. In *Guibord v. The Queen*, 2011 FCA 346, the Federal Court of Appeal stated at paragraphs 9 and 10:

> 9 An award of costs in the Tax Court of Canada is governed by section 147 [of] the Rules. That section vests the Tax Court with discretionary power over costs. . . .
>
> 10 Such costs awards are largely at the discretion of a Tax Court judge because that judge is in the best position to determine which party should pay costs and the quantum of such costs. Though these costs awards are highly discretionary, that discretion must be exercised on a principled basis: *Lau v. Canada*, 2004 FCA 10. An appellate court must thus defer to a Tax Court judge's exercise of discretion in determining costs and should only intervene if the judge considered irrelevant factors, failed to consider relevant factors, or reached an unreasonable conclusion.[4]

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allocation of costs and highlighted the benefits of lump sum awards in discussing subsections 400(1) and (4) the *Federal Courts Rules* (SOR/98-106) (see paragraphs 10 to 12).

[3] *The Queen v. Martin*, 2015 FCA 95 at paragraph 21. For a more detailed review of this Court's approach to the award of costs, see *Ford Motor Company of Canada, Limited v. The Queen*, 2015 TCC 185.

[4] See, also, *The Queen v. Lau*, 2004 FCA 10 at paragraph 5 and *The Queen v. Landry*, 2010 FCA 135 at paragraph 22. As stated by Boyle J. in *Spruce Credit Union v. The Queen*, 2014 TCC 42, the intervening change (since *Lau* and *Landry*) in the language of subsection 147(1) of the Rules "does not in any way affect the nature, breadth, or scope of this Court's power to fix costs provided always it is exercised on a principled basis" (paragraph 18). In

[9] It is not mandatory that the Court consider the factors listed in subsection 147(3) of the Rules.[5] However, those factors provide a very helpful framework for assessing on a principled basis whether and to what extent costs should be awarded to a party in a given set of circumstances. I will therefore address each of the factors listed in subsection 147(3).

A. The Result of the Proceeding

[10] The Respondent submits that success on the issues was divided because I accepted the Respondent's position regarding the interpretation of the preamble to paragraph 95(2)(l) of the ITA. I cannot accept that submission. While I may not have accepted all of the Appellant's legal arguments regarding the interpretation of paragraph 95(2)(l), the Appellant was appealing the application of paragraph 95(2)(l) to the income of CCG Trust Corporation ("CCG") and, in the result, was entirely successful in each of the Appeals.[6] In my view, the result favours an appropriate award of costs in favour of the Appellant.

B. The Amounts in Issue

[11] The incremental amount of income reassessed by the Minister of National Revenue (the "Minister") was $220,365,774. The Appellant's submission is that the total amount of tax, interest and instalment penalties in issue was $72,560,284, of which $46,884,370 was income tax. The Respondent acknowledges that the amounts in issue were significant and that this favours increased costs. I find that

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Nova Chemicals, in the context of subsections 400(1) and (4) of the *Federal Courts Rules*, the Federal Court of Appeal stated at paragraph 19:

> While, as noted above, a judge fixing costs on a lump sum basis has a wide discretion, the discretion is not unfettered. As noted, it is not a matter of plucking a number out of the air. The discretion must be exercised prudently. . . .

[5] Subsection 147(3) of the Rules states that the Court "may" consider the factors listed in the subsection. In *Martin*, *supra* footnote 3, the Federal Court of Appeal observes, at paragraph 21, that the Tax Court "may consider a number of factors,". In *Velcro*, Rossiter A.C.J. (as he then was) emphasized the practical importance of the factors listed in subsection 147(3), at paragraph 17:

> It is my view that in every case the Judge should consider costs in light of the factors in Rule 147(3) and only after he or she considers those factors on a principled basis should the Court look to Tariff B of Schedule II if the Court chooses to do so.

In *Nova Chemicals*, the Federal Court of Appeal stated that the criteria in subsection 400(3) of the *Federal Courts Rules* are relevant considerations.

[6] In *General Electric Capital Canada Inc. v. The Queen*, 2010 TCC 490, Hogan J. observed at paragraph 31:

> With respect to the result of the proceeding, the Appellant obtained all that it sought in the case. There is a strong tendency in the case law to accept the principle that costs awards should not be distributive, with the amounts being based on the outcome of particular arguments. . . .

the amounts in issue were substantial and that this factor favours an appropriate award of costs in favour of the Appellant.

C. The Importance of the Issues

[12] The Respondent acknowledges that the issues raised in the Appeals were of broad importance to the financial services industry. I would also note that the statutory provision addressed in the Appeals – paragraph 95(2)(l) – is part of the regime in subdivision i of Division B of Part I of the *Income Tax Act* (the "ITA"), applicable to the taxation of foreign affiliates and their direct or indirect Canadian owners. Until the judgment in the Appeals, paragraph 95(2)(l) had not been considered by the Tax Court of Canada. The interpretation of paragraph 95(2)(l) required the interpretation of terms and concepts that are used elsewhere in subdivision i of the ITA. Accordingly, this factor favours an appropriate award of costs in favour of the Appellant.

D. Any Offer of Settlement Made in Writing

[13] The Appellant made a settlement offer in writing by letter dated September 3, 2015 (the "Offer"). The Offer is summarized in the following table through the comparison of the inclusions in the income of the Appellant suggested in the Offer with the amounts included by the reassessments addressed in the Appeals (the "Reassessments"):

Taxation Year	Amount of Income Reassessed	Reduction of Income	Balance of Income Inclusion
2003	$41,366,142	$40,277,599	$1,088,543
2004	$37,710,239	$36,699,257	$1,010,982
2005	$44,024,634	$42,833,524	$1,191,110
2006	$29,047,662	$28,278,650	$769,012
2007	$23,375,091	$22,729,449	$645,642
2008	$23,891,920	$23,281,659	$610,261
2009	$20,950,086	$20,312,519	$637,567

[14] The Offer does not provide the rationale for the reductions in the income of the Appellant set out therein. The Reassessments included in the income of the Appellant, as income from shares, amounts in respect of income earned by controlled foreign affiliates ("CFAs") of the Appellant during 2003 through 2009. They did so on the basis that, by virtue of paragraph 95(2)(l) of the ITA, such income was "foreign accrual property income" ("FAPI") as defined in subsection

95(1) of the ITA. Either paragraph 95(2)(l) applied to deem the targeted income of the CFAs to be FAPI or it did not. The Offer appears to suggest that there is some basis for (relatively) small inclusions in income without explaining the legal and factual basis for that conclusion. Given the black and white nature of the legal issue and the absence of any explanation for the position taken by the Appellant in the Offer, I give no weight to the Offer in determining costs.[7]

E. The Volume of Work

[15] The Appellant submits that the volume of work required to contest the Reassessments was "very significant" and was "substantially greater" than the volume of work required for the "average appeal" before the Tax Court of Canada. The Appellant states that the total number of hours spent on the Appeals by the four partners working on them was 4,770.7. In addition, four associates spent 1,384.8 hours on the Appeals and two paralegals spent 1,159.1 hours on the Appeals.

[16] The Respondent suggests that the Appellant's counsel may have significantly over-prepared his presentation. In my view, that is somewhat difficult to gauge in circumstances involving complex legal and factual issues that have not before been the subject of consideration by the Tax Court of Canada. Certainly, in the absence of obvious excess, it is not the role of the Court to second-guess counsel's judgment regarding the work required to fully prepare for such a case.[8] However, I accept that in circumstances involving such significant stakes for the Appellant, efficiency and frugality may have taken a back seat to thoroughness.

[17] In any event, it is important to recognize that the volume of work is merely one factor that may be considered in assessing whether and to what extent costs should be awarded to a party. The consideration of this factor must not be confused

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[7] In *CIBC World Markets Inc. v. The Queen*, 2012 FCA 3, the Federal Court of Appeal observes at paragraph 24:

> . . . But the Minister's power to agree to facts is limited by the *Galway* principle - the Minister cannot agree to an assessment that is indefensible on the facts and the law. . . .

[8] In *RMM Canadian Enterprises Inc. v. R.*, [1997] 3 C.T.C. 2103, 97 DTC 420 (TCC), Judge Bowman (as he then was) observed at paragraph 5 C.T.C. (page 421 DTC):

> . . . It frequently happens in litigation that arguments are advanced in support of positions that, with the benefit of hindsight, turn out to have been unnecessary. Unless such arguments are plainly frivolous or untenable, I do not think that a litigant should be penalized in costs simply because its counsel decides to pull out all the stops, nor do I think that it is my place to second guess counsel's judgment, after the event, and say, in effect[:]"If you had had the prescience to realize how I was going to decide we could have saved a lot of time by confining the case to one issue." Moreover, one of counsel's responsibilities is to build a record which will enable an appellate court to consider all of the issues.

with the ultimate determination of the amount of costs, if any, that are awarded to a party. That determination is to be made on a principled basis, having regard to all relevant factors, which, in addition to the factors identified in subsection 147(3) of the Rules, include any other matter relevant to the question of costs.

[18] In this case, the Appeals involved a significant volume of legal work for the Appellant's counsel, which favours an appropriate award of costs in favour of the Appellant.

F. The Complexity of the Issues

[19] The Appellant submits that the Appeals addressed multiple highly complex and technical issues under the tax, financial services and securities/regulatory laws of Canada and Barbados. The Respondent acknowledges that the fact that the Appeals concerned the FAPI regime in the ITA favours increased costs. I agree that the issues addressed in the Appeals were complex, which favours an appropriate award of costs in favour of the Appellant.

G. The Factors Listed in Paragraphs 147(3)(g) Through (i.1)

[20] The Appellant addresses the factors in paragraphs 147(3)(g), (h), (i) and (i.1) of the Rules as a group. However, the Appellant's focus appears to be on paragraphs 147(3)(g) and (h).

[21] The Appellant submits that the conduct of the Respondent lengthened unnecessarily the duration of the Appeals. The Appellant points to a motion of the Respondent under section 98 of the Rules brought at the hearing, to certain legal arguments made by the Respondent, to the insistence on the Appellant's compliance with the notice requirements in section 30 of the *Canada Evidence Act* (the "CEA") and to time wasted during trial management conferences.

[22] In my view, the Appellant's submissions on delay seem to confuse the usual thrust and parry of complex high-stakes tax litigation with conduct resulting in unnecessary delay. For example, bringing a motion at trial to exclude certain evidence under section 98 of the Rules is not conduct resulting in unnecessary delay. The Respondent was entitled to bring such a motion and have the Court address the motion. The whole process took approximately one hour. Similarly, the Respondent was entitled to insist that the Appellant meet the notice requirements in section 30 of the CEA in order to introduce business records under the hearsay exception in that section.

[23] The Appellant also submits that the Respondent should have made a number of admissions, most notably that the exemption in subparagraph 95(2)(l)(iii) applied to CCG, and that the contents of the Appellant's expert reports on foreign law necessitated that conclusion. The Respondent was not required to admit the evidence on foreign law set out in the expert reports tendered by the Appellant. Nor was the Respondent required to adopt the legal conclusions that, the Appellant argued, flowed from that evidence. The import of the expert evidence and the legal conclusions to be drawn in the circumstances were properly left to the Court.

[24] The Appellant included with its submissions on costs a copy of a request to admit and the Respondent's response to that request. It is apparent from these materials that the Appellant was asking the Respondent to admit several matters that involved questions of mixed law and fact. I also see no evidence that the Respondent failed to admit facts that she should have admitted. To find for the purposes of paragraph 147(3)(h) of the Rules that a fact should have been admitted but was not, it must be plain and obvious that, at the time the request to admit was made, the admitted fact was true.

[25] The Respondent submits that the Appellant's voluminous submissions raised and dealt with issues that were not in dispute and unnecessarily lengthened the proceedings. I agree that the submissions were voluminous, but do not agree that this unnecessarily contributed to the length of the hearing. Counsel is entitled (albeit not encouraged) to thrash through all arguments that counsel reasonably believes may be relevant to the issues. While focus and brevity in argument can rarely be faulted, nor can thoroughness, unless that thoroughness leads to obvious excess. I find no obvious excess here.

[26] The Respondent also submits that the Appellant delayed the hearing of the Appeals by failing to tender an expert report in advance of the commencement of the hearing in January 2015, which in turn required the Appellant to bring a motion to introduce expert evidence. I granted the motion for the reasons given orally at the time and awarded costs to the Respondent in the amount of $25,000 in any event of the cause. The granting of the motion ultimately delayed the hearing until November 2015. The Respondent submits that the actions of the Appellant required the parties to prepare for trial twice and that no costs should be awarded to the Appellant for the period after January 22, 2015, except with respect to one counsel's attendance at trial management conferences and at the continuation of the hearing in November 2015.

[27] The costs awarded to the Respondent compensated the Respondent for time spent preparing for trial in January 2015. However, the delay in the hearing at the request of the Appellant also required the parties to prepare for trial a second time. This circumstance will be considered in awarding costs.

[28] I have seen no evidence of conduct, by either party, described in paragraph 145(3)(i) of the Rules.

[29] With regard to paragraph 145(3)(i.1) of the Rules, the Respondent submits that only a single expert report was required regarding the applicable law of Barbados. The evidence on foreign law set out in the Appellant's expert reports was critical to the Appellant's case. However, there was a great deal of overlap in the reports. This duplication will be considered in awarding costs.

H. Any Other Matter Relevant to the Question of Costs

[30] The Respondent has raised several matters that she believes are relevant to the issue of costs. These matters are as follows:

(a) The Respondent submits that the Appellant should not be allowed any amount for the preparation of its submissions regarding costs on the basis that the Respondent requested a bill of costs in an attempt to resolve the costs issue, but the Appellant declined. I requested submissions on costs so I do not accept this submission as relevant to costs. However, I do agree that parties should be encouraged to reach agreement as to costs wherever that is possible.

(b) The Respondent submits that only one of the Appellant's three counsel in attendance at the hearing presented at the hearing and that this favours less than full recovery for those three counsel. I believe this falls under the thoroughness comments I made earlier and I have taken it into account accordingly.

(c) The Respondent submits that no costs should be awarded in respect of counsel and paralegals who spent very small amounts of time on the file. Very small in this context appears to mean less than 500 hours. Again, I believe this falls under the thoroughness comments I made earlier and I have taken it into account accordingly.

(d) The Respondent submits that, despite two requests in writing, the Appellant failed to provide an affidavit of disbursements and therefore should not be permitted to recover any of its disbursements. The Respondent notes that, under subsection 157(3) of the Rules, the Appellant is required to establish its disbursements (except fees paid to the Registry). While that subsection applies to the taxation of costs, I agree that as a general principle disbursements should not be reimbursed unless there is evidence acceptable to the Court of those disbursements. In this case, it will be left to the taxing officer to determine if the disbursements of the Appellant have been adequately proven.

(e) The Respondent submits that the Appellant's request for photocopying costs of $66,249.88 is excessive. Again, this will be left to the taxing officer to determine.

II. <u>Conclusion</u>

[31] I have carefully considered each of the factors described above and I have concluded that an award to the Appellant of a lump sum in lieu of taxed costs for counsel fees is appropriate in the circumstances. However, I am not willing to accept the Appellant's suggestion of an award of $1,877,084. I am also not willing to accept the Respondent's suggestion of a cap of between $616,505 and $924,758.

[32] In my view, the result of the proceeding, the amounts in issue, the importance of the issues, the volume of work (taking into account the likely motivation of the Appellant to be thorough), the complexity of the issues and the Appellant's delay of the hearing collectively justify a lump sum award to the Appellant of $1,100,000 in lieu of taxed costs for counsel fees. This amount is approximately 36% of the adjusted counsel fees of $3,082,527.34. I believe that in the circumstances this award of costs appropriately contributes to the costs incurred by the Appellant for counsel fees in respect of the proceeding, without being either extravagant or punitive to the Respondent.[9]

[33] With respect to disbursements, including HST, I order that the disbursements claimed by the Appellant be taxed in accordance with the Rules, with the proviso that the award of costs to the Appellant for expert reports not exceed $175,000 in recognition of the duplication in the reports tendered by Chancery Chambers and Lex Caribbean and the failure to tender the report of North Star Compliance.

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[9] *Martin v. The Queen*, 2014 TCC 50 at paragraph 14, appeal allowed at 2015 FCA 95.

Pursuant to Rule 172 of the *Tax Court of Canada Rules (General Procedure)* these Amended Reasons for Order are issued in substitution for the Reasons for Order dated April 11, 2017 in order to correct a typographical error contained in the neutral citation number.

Signed at **Toronto**, **Ontario**, this **24th** day of **May** 2017.

"J.R. Owen"

Owen J.

CITATION:	2017 TCC **86**
COURT FILE NOs.:	2012-950(IT)G, 2013-1251(IT)G, 2013-1252(IT)G, 2013-1253(IT)G, 2013-1254(IT)G, 2013-2961(IT)G, and 2013-2962(IT)G
STYLE OF CAUSE:	CIT GROUP SECURITIES (CANADA) INC. v. THE QUEEN
AMENDED REASONS FOR COSTS ORDER BY:	The Honourable Justice John R. Owen
DATE OF ORIGINAL COSTS ORDER:	**April 11, 2017**
DATE OF AMENDED REASONS FOR ORDER:	**May 24, 2017**

APPEARANCES:

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Counsel for the Respondent:	Elizabeth Chasson, Darren Prevost and Leonard Elias

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