Docket: 2020-1104(IT)G

BETWEEN:

ANTOINE MARIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 21, 2022, at Quebec City, Quebec

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the Appellant:	Maurice Renoux
Counsel for the Respondent:	Marie-Aimée Cantin

JUDGMENT

In accordance with the attached reasons for judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2018 taxation year is dismissed with costs to the respondent computed in accordance with Schedule II, Tariff B of the *Tax Court of Canada Rules (General Procedures)*.

Signed at Ottawa, Canada, this 13th day of May 2019.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 15th day of August 2022.
François Brunet, Revisor

Citation: 2022 TCC 49
Date: 20220513
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REASONS FOR JUDGMENT

Lafleur J.

I. Background

[1] Antoine Marin is appealing to this Court from the reassessment of tax for the 2018 taxation year, the notice of which, dated March 5, 2020, was issued by the Minister of National Revenue (the Minister) pursuant to the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.)) (the Act).

[2] In that reassessment, the Minister added to Mr. Marin's income a total of $307,829 in net rental income from an immovable property located in France and refused to grant a foreign tax credit on the grounds that Mr. Marin had not paid any tax in France on this income, as he had received a tax credit under French legislation that resulted in the cancellation of any French tax on this income.

[3] At the hearing, Mr. Marin and his tax accountant, Steve Lafrenière, were the only ones to testify. Mr. Marin acknowledged that his net rental income from the immovable property in France in 2018 totalled $307,829 (the equivalent of 201,169 euros). In addition, the appellant did not dispute that the Act requires that this income be included in computing Mr. Marin's income for Canadian tax.

[4] Unless otherwise indicated, any statutory provision referred to in these reasons is a provision of the Act.

II. Issue

[5] This Court must determine whether Mr. Marin is entitled to deduct an amount as a foreign tax credit in computing his tax otherwise payable in Canada for the 2018 taxation year pursuant to subsection 126(1). The parties agreed that subsection 126(2) did not apply in this case.

III. Conclusion

[6] For the following reasons, this Court concludes that Mr. Marin cannot deduct any amount as a foreign tax credit in computing his tax otherwise payable in Canada for the 2018 taxation year pursuant to subsection 126(1).

IV. The facts

[7] In the case at bar, the facts are not in dispute.

[8] Mr. Marin is a Canadian resident. For a number of years, he has held shares in the Société civile immobilière (S.C.I.) Miromesnil [Miromesnil Real Estate Civil Partnership] (the "partnership") and in this regard receives rental income from the building that is owned by the partnership and located in France. Under French law, a *société civile immobilière* [real estate civil partnership] provides full fiscal transparency. Therefore, Mr. Marin, as a shareholder of the partnership, must as a general rule pay tax in France on the net rental income from the building owned by the partnership based on the number of shares he holds.

[9] Between 2009 and December 21, 2017, Mr. Marin held 4% of the partnership's shares. On December 22, 2017, he acquired 21 additional shares. Therefore, as of December 22, 2017, as well as throughout the years 2018 and 2019, Mr. Marin held 25% of the partnership's shares.

[10] Although Mr. Marin held only 4% of the partnership's shares until December 21, 2017, he paid tax in France in 2017 on net rental income of 227,697 euros (or the equivalent of $333,576), which accounts for 25% of the shares. Indeed. Mr. Marin made a tax election in this respect in his income tax return filed with the French State. The taxes that he owed the French State on the 2017 net rental income[1] were paid during the year 2018, as required under French legislation at that

[1] In its reasons, to identify the net rental income that the partnership paid to Mr. Marin in a year, this Court will refer to the income of a particular year to simplify the text.

time, in three payments totalling 121,781 euros (or the equivalent of $186,349): a first payment of 4,139 euros on February 26, 2018, a second payment of 4,139 euros on May 25, 2018, and a third payment of 113,503 euros on September 27, 2018.

[11] In the income tax return filed with the Canada Revenue Agency for the 2017 taxation year, Mr. Marin, however, reported a net rental income equivalent to the shares of the partnership he in fact held, that is, 4% of the shares until December 21, 2017, and 25% from December 22 to 31, 2017. Therefore, for the purposes of his taxation in Canada, he reported a net rental income of $4,836 and then claimed a deduction of $4,836 from his net income.

[12] In 2018, the partnership paid Mr. Marin a net rental income of 201,169 euros (or the equivalent of $307,829). This net income was not taxed in France, as Mr. Marin received a tax credit resulting in the cancellation of any French tax on this income.

[13] Starting in January 2019 and during all the months of the year 2019, Mr. Marin paid the French State taxes totalling 116,216 euros on his 2019 net rental income, in accordance with the new French tax collection rules.

V. Positions of the parties

5.1 According to the appellant:

[14] Mr. Marin. should be entitled to a foreign tax credit because, during the year 2018, he did in fact pay the French State taxes totalling $186,349 (the equivalent of 121,781 euros) on the 2017 income. According to the appellant, subsection 126(1) applies to the foreign taxes paid during the year 2018 and not only the foreign taxes paid on the 2018 income.

[15] The evidence has purportedly shown that Mr. Marin has indeed paid taxes in France on the net rental income from the partnership each year as of the year 2014, including the year 2018. The appellant submits that, if he were denied the foreign tax credit for the 2018 taxation year, he would be subject to double taxation. Therefore, the year 2018 would not have been tax-free as the respondent suggested.

[16] In the alternative, the appellant contends that, under subsection 6(1) of the *Convention Between Canada and France for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (May 2, 1975, [1976] Can. T.S. No. 30, as amended) (the Tax Convention), income

from an immovable property may be taxed only in the State where the immovable property is located. Therefore, in Mr. Marin's case, the 2018 income should be taxable only in France. According to the appellant, the Tax Convention takes precedence over the Act with respect to taxation of foreign income.

[17] In the alternative as well, section 23 of the Tax Convention should apply to avoid double taxation in Mr. Marin's case. Indeed, based on the appellant's calculations, if the foreign tax credit is denied, Mr. Marin would pay tax equivalent to 112% of the 2018 income.

5.2 According to the respondent:

[18] Given that Mr. Marin did not pay tax in France on the 2018 income because he received a tax credit under French legislation, he therefore is not eligible to claim the foreign tax credit in Canada for the 2018 taxation year. The respondent submits that the words "for the year" appearing in subsection 126(1) and repeated in a number of provisions of the Act refers to the taxation year and, in this case, the 2018 taxation year, in keeping with the purpose and spirit of the Act. In addition, for the 2018 taxation year, the foreign tax credit must take into account the foreign taxes paid on the 2018 income, which are also taxable in Canada for the 2018 taxation year, and not foreign taxes paid on the 2017 income. This interpretation is consistent with the purpose and scheme of the Act as a whole.

[19] The interpretation of subsection 6(1) of the Tax Convention proposed by the appellant is incorrect. Although subsection 6(1) provides that the income from immovable property located in France is taxable in France, this does not prevent Canada from taxing this same income. In addition, in this case, the Tax Convention cannot apply because there is no double taxation of this same income, that is, the 2018 income.

VI. ANALYSIS

6.1 Changes to the tax collection system in France

[20] The evidence has shown that new tax collection procedures came into force in France on January 1, 2019. Until the end of the year 2018, French taxpayers paid their taxes during the year that followed the year in which the income was collected or earned. As of January 1, 2019, French taxes are now deducted at the source or collected in monthly or quarterly payments during the same year in which the income is collected or earned.

[21] To avoid double taxation during the year 2019, whether it be of income collected or earned in 2018 under the old rules or income collected or earned in 2019 under the new rules, the French State has offered in some cases relief in the form of a tax credit called the "crédit d'impôt de modernisation du recouvrement" [collection modernization tax credit] or "CIMR" on the income collected or earned in 2018. If it were not for the application of the CIMR, French taxpayers would have had to pay, during the year 2019, taxes on income collected or earned in 2018 (generally, in three payments), as well as taxes in the form of source deductions or monthly or quarterly tax payments on the income collected or earned in 2019.

[22] The evidence has shown that Mr. Marin did indeed receive the CIMR on the 2018 income. In July 2019, Mr. Marin received from the Public Finances Directorate General of the French Republic a document entitled "Avis d'impôt 2019 - Impôt sur le revenu et prélèvements sociaux sur les revenus de 2018" [2019 Tax Notice: Income Tax and Payroll Tax on 2018 Income] indicating that taxation of the 2018 income in the amount of 104,965 euros ($160,617) was cancelled and that the income tax total was zero euros in the light of source deductions being introduced on January 1, 2019. The second page of that same notice indicates that the net income tax before adjustments of 70,363 euros was cancelled by the application of the *crédit d'impôt de modernisation du recouvrement*.

6.2 Tax Convention

[23] For the following reasons, this Court concludes that the interpretation of subsection 6(1) of the Tax Convention proposed by the appellant is incorrect. In addition, given that double taxation of the 2018 income did not take place within the meaning of the Tax Convention, Mr. Marin cannot invoke section 23 of the Tax Convention to deduct from the taxes payable to Canada for the 2018 taxation year the amount of taxes on the 2017 income that were paid to France during the year 2018.

Taxation of 2018 income:

[24] Under section 2, a person who resided in Canada at any given time during the taxation year must pay tax on his or her taxable income for that taxation year. The taxable income for a taxation year is the income for the year plus the additions and deductions set out in the Act (Part I, Division C). Under section 3, the taxpayer must include in computing his or her income for a particular taxation year the total of all amounts each of which is income for that taxation year from a source inside or outside Canada.

[25] Therefore, Mr. Marin, as a Canadian resident, must pay tax to Canada on his worldwide income. For the 2018 taxation year (which is the calendar year: see paragraph 249(1)(c)), Mr. Marin is therefore required to include in computing his income for Canadian tax the 2018 income, which the parties determined to be $307,829. It is also clear that, under the Act, the 2017 income must not be included in computing Mr. Marin's income for the 2018 taxation year.

[26] In addition, the evidence has shown that Mr. Marin, as a shareholder of the partnership, reported the 2018 income in his 2018 property income tax return filed with the French State.

[27] Therefore, the 2018 income is taxable in Canada under the Act and in France under French law. However, as stated above, the taxation of the 2018 income in France was cancelled; Mr. Marin did not pay any tax in France on the 2018 income.

Interpretation of tax conventions:

[28] Tax conventions must be given a liberal interpretation with a view to implementing the true intentions of the parties (*Crown Forest Industries Ltd. v. Canada*, [1995] 2 S.C.R. 802, at par. 43 ("Crown Forest")). A court may refer to accepted model conventions in ascertaining the goals and intentions (*Crown Forest*, at par. 44). Therefore, the Organization for Economic Co-operation and Development's *Model Double Taxation Convention on Income and on Capital* (963, re-enacted in 1977) (the OECD Model), which "has world-wide recognition as a basic document of reference in the negotiation, application and interpretation of multilateral or bilateral tax conventions," may be used in this interpretive exercise (*Crown Forest*, at par. 55). For instance, this Court must consider the Supreme Court of Canada's cautions regarding the use of the commentaries to the OECD Model to interpret tax conventions when, for example, a convention is not based on the OECD Model or the OECD Model was released a number of years after the signing of the convention in question (*Canada v. Alta Energy Luxembourg S.A.R.L.*, 2021 SCC 49, at par. 38).

[29] In this case, the relevant provisions of the Tax Convention were enacted in 1975. Contrary to the appellant's contention, it is entirely appropriate for this Court to refer to the OECD Model released in 1977 and to the commentaries relating thereto.

Subsection 6(1) of the Tax Convention:

[30] Subsection 6(1) of the Tax Convention provides that "[i]ncome from immovable property . . . may be taxed in the Contracting State in which such property is situated."

[31] This section does not provide that only the State in which the property is located can tax the income from the property, as contended by the appellant. If this had been what Canada and France had intended, the wording of subsection 6(1) would have been different. For example, subsection 14(1) of the Tax Convention provides that "[i]ncome derived by a resident of a Contracting State in respect of professional services . . . shall be taxable only in that State . . ." [Emphasis added.] Similarly, subsection 18(1) of the Tax Convention provides that ". . . pensions . . . arising in a Contracting State shall be taxable only in the Contracting State in which they arise." [Emphasis added.]

[32] In addition, according to the commentaries to the OECD Model in regard to section 23, reference to being "taxable" in a Contracting State in a section of a tax convention does not give that Contracting State the exclusive right to tax an income, unlike the words "shall be taxable only" in a Contracting State (sections 6 and 7).

[33] Therefore, under subsection 6(1) of the Tax Convention, although France has the right to tax Mr. Marin on the net rental income from the partnership, as this income is from an immovable property located in France, Canada also has the right to tax Mr. Marin on the same income under its own tax legislation (subject to the application of the foreign tax credit or another deduction under the Act).

Section 23 of the Tax Convention

[34] The preamble in the Tax Convention expressly states the purpose of the Tax Convention, which is to avoid double taxation: "Desiring to conclude a Convention for the avoidance of double taxation . . . with respect to taxes on income . . . Have agreed as follows."

[35] Section 23 of the Tax Convention sets out how Canada and France will avoid this double taxation. For example, paragraph 23(1)(a) of the Tax Convention provides that, subject to provisions of the Act, "French tax payable under the law of France and in accordance with this Convention on profits, income or gains arising in France shall be deducted from any Canadian tax payable in respect of such profits, income or gains." [Emphasis added.]

[36] The wording of this provision is clear: double taxation, where the same income is taxed in both Contracting States, must be avoided. The Tax Convention refers to income, irrespective of the time when the tax is to be paid to the tax authorities or collected by them.

[37] In addition, according to the commentaries to the OECD Model, section 23 addresses the so-called juridical double taxation, that is, the situation where a person can be taxed on the same income by more than one State (section 1).

[38] Therefore, in order for the provisions of the Tax Convention to be invoked, the taxes paid or payable in the two States must be for the same income.

[39] The evidence has shown that Mr. Marin did not pay tax in France on the 2018 income. Indeed, the taxes that Mr. Marin paid in France during the year 2018 were for the 2017 income. As well, the taxes that Mr. Marin paid in France during the year 2019 were for the 2019 income. Mr. Lafrenière himself acknowledged that the tax collected during the year 2019 was for the 2019 income and that the tax paid during the year 2018 was for the 2017 income. As a result of the CIMR that France granted Mr. Marin, no tax was paid to the French State on the 2018 income.

[40] Therefore, since Mr. Marin did not pay tax to the French State on the 2018 income, he cannot invoke the Tax Convention for Canadian tax relief on the 2018 income, given the absence of double taxation on the 2018 income.

[41] In addition, the argument that Mr. Marin would pay tax equivalent to 112% of the 2018 income cannot be accepted. Indeed, to arrive at that result, the appellant is taking into account the taxes on the 2017 income, which were paid in France during the year 2018, as well as the taxes payable to Canada on the 2018 income. The appellant cannot take into account the taxes payable for two different taxation years without also taking into account the total income for both years; failure to do so inevitably results in a very high tax rate. When the 2017 income (as reported in France) and the 2018 income are taken into account, the tax rate is approximately 54% instead. In addition, if the appellant had included in his calculations the taxes and income from a single year at a time, he would have clearly observed that there was no double taxation of the 2018 income.

6.3 Section 126:

[42] For the following reasons, this Court concludes that the interpretation of the Act proposed by the respondent must be accepted. Therefore, for the 2018 taxation

year, Mr. Marin is not entitled to the foreign tax credit for the taxes paid in France during the 2018 taxation year pursuant to subsection 126(1), as no tax was paid to the French State on the 2018 income.

The Act and interpretive approach:

[43] Under subsection 126(1), the foreign tax credit is the lesser of the two following amounts (as defined in subsection 126(7)):

a) non-business-income tax paid for the year to the government of a country other than Canada;

b) tax for the year otherwise payable under Part I of the Act on a foreign-source income.

[44] The relevant portions of subsections 126(1) and (7) read as follows:

126 (1) A taxpayer who was resident in Canada at any time in a taxation year may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to **(a)** such part of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada (except, where the taxpayer is a corporation . . .) as the taxpayer may claim, not exceeding, however, **(b**) that proportion of the tax for the year otherwise payable under this Part by the taxpayer that . . .	**126 (1)** Le contribuable qui résidait au Canada à un moment donné d'une année d'imposition peut déduire de l'impôt payable par ailleurs par lui pour l'année en vertu de la présente partie une somme égale à : **a)** la partie de tout impôt sur le revenu ne provenant pas d'entreprises qu'il a payé pour l'année au gouvernement d'un pays étranger (sauf, lorsque le contribuable est une société [...]) dont il peut demander la déduction; cette somme ne peut toutefois dépasser : **b)** la fraction de l'impôt payable par ailleurs par lui pour l'année en vertu de la présente partie que représente : [...]
126 (7) In this section, . . . ***non-business-income tax*** paid by a taxpayer for a taxation year	**126 (7)** Les définitions qui suivent s'appliquent au présent article. [...]

to the government of a country other than Canada means, subject to subsections (4.1) to (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of that country that

. . .

tax for the year otherwise payable under this Part by a taxpayer means

(a) in paragraph (1)(*b*) and subsection (3), the amount determined by the formula

A - B

where

A is the amount that would be the tax payable under this Part for the year by the taxpayer . . .

impôt payable par ailleurs pour l'année en vertu de la présente partie S'agissant de l'impôt payable par ailleurs pour l'année en vertu de la présente partie par un contribuable :

a) à l'alinéa (1)*b*) et au paragraphe (3), le montant obtenu par la formule suivante :

A - B

où :

A représente l'impôt payable en vertu de la présente partie pour l'année par le contribuable [...]

[...]

impôt sur le revenu ne provenant pas d'une entreprise S'agissant de l'impôt sur le revenu ne provenant pas d'une entreprise payé par un contribuable pour une année d'imposition au gouvernement d'un pays étranger, s'entend, sous réserve des paragraphes (4.1) à (4.2), de la fraction de l'impôt sur le revenu ou sur les bénéfices qu'il a payé pour l'année au gouvernement de ce pays, qui remplit les conditions suivantes :

[...]

[45] The question therefore is whether the word "year" in subsection 126(1) as well as in subsection 126(7) (in the definition of the phrase "non-business-income tax") refers to the phrase "taxation year" at the beginning of the subsection and whether the preposition "for" in "for the year" in the same provisions means "*pendant*" [during] or "*au cours de*" [in the course of] the year as the appellant contends.

[46] According to the interpretive approach propounded by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at par. 10 ("*Trustco Mortgage*"): "The interpretation of a statutory

provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole." In that same case, the Supreme Court of Canada noted that the complexity of certain provisions of the Act should prompt the courts to place particular emphasis on the textual interpretation so as to ensure the consistency, predictability and fairness required for taxpayers (*Trustco Mortgage*, at sections 11 and 12).

Language:

[47] The language of subsection 126(1) clearly shows that the word "year" in this subsection means "taxation year." As noted above, the taxation year is, for an individual, the calendar year (paragraph 249(1)(c)).

[48] First, the phrase "taxation year" is found at the beginning of subsection 126(1). It would have been repetitive to use the phrase "taxation year" at each mention of the word "year."

[49] Second, the words "*impôt sur le revenu ne provenant pas d'entreprises qu'il a payé pour l'année au gouvernement d'un pays étranger*" also refers to the taxation year according to the definition in subsection 126(7): "*S'agissant de l'impôt sur le revenu ne provenant pas d'une entreprise payé par un contribuable pour une année d'imposition au gouvernement d'un pays étranger*." [Emphasis added.] The English version also refers to the taxation year: "non-business-income tax paid by a taxpayer for a taxation year to the government of a country other than Canada." [Emphasis added.]

[50] In addition, the use of the definite article (or definite determiner) "*l'*" (in English, the word "the") before the word "*année*" [year] indicates that the taxation year for the foreign tax paid by a taxpayer is the same taxation year as that for which taxable income and taxes are computed for Canadian purposes.

[51] Furthermore, the provisions of the Act are interpreted as a whole. There is a presumption of consistent expression in the Act. The presumption presupposes that the same word used within the same act has the same meaning.

[52] Therefore, the phrase "taxation year" appears at the beginning of section 3 and then only the words "for the year" are used. It is clear, however, that these words in section 3 also refer to the taxation year for which the income is to be computed and not another taxation year. The same conclusion applies to the interpretation to be given to subsection 9(1), which deals with the computation of income from a property and provides that a taxpayer's income from a property "for a taxation year . . . is the taxpayer's profit from that business or property for the year."

[53] In addition, the appellant submits that the preposition "*pour*" [for] (before the word "*année*" [year]) means "*le moment où quelque chose doit se faire*" [the time when something should happen] and is synonymous with "*pendant*" [during], "*au cours de*" [in the course of], "*à l'égard de*" [with respect to] and "*quant à*" [regarding].

[54] This Court agrees that the preposition "*pour*" means "*à l'égard de*" and "*quant à*" but it does not mean "*pendant*" or "*au cours de*." It is not appropriate to look for synonyms when one is required to textually interpret a section of the Act. Instead, the Court must ascertain the ordinary meaning of such words as found in the dictionaries when the word is not defined in the Act (*Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at par. 84; *Lavrinenko v. Canada*, 2019 FCA 51, [2020] 1 F.C.R. 391, at par. 23; *North Shore Power Group Inc. v. Canada*, 2018 FCA 9, at par. 31.)

[55] In the *Petit Robert de la langue française* (Paul Robert, *Le Petit Robert*, Paris, 2022), the definition for the preposition "*pour*" includes the following: "5. *En ce qui concerne*." In the Larousse dictionary (*Larousse*, Paris, 2002), the definition of the preposition "*pour*" includes the following: "10. *Sert à mettre en évidence un sujet, un attribut, un complément d'objet direct; il est l'équivalent de* quant à." In the Larousse online dictionary (Larousse, online: <https://www.larousse.fr/dictionnaires/francais-monolingue>), the definition includes the following: "*la chose ou la personne concernée, dont il est question*."

[56] The definition of the English preposition "for" includes the following in the *Canadian Oxford Dictionary* (Katherine Barber, *Canadian Oxford Dictionary*, 2nd ed., Toronto, Oxford University Press, 2004): "4. With reference to; regarding; so far as concerns". In the online *Oxford English Dictionary* (<https://www.oed.com/>), this preposition is defined as follows:

> **IV.** Of purpose or destination.
> **8.**
>
> **a.** With a view to; with the object or purpose of: as preparatory to.
>
> . . .
>
> **12.** Indicating destination. Cf, French *pour*.
>
> . . .
>
> **d.** Introducing the intended recipient, or the thing to which something is intended to belong, or in connection with which it is to be used.

[57] These definitions of the preposition "*pour*" and its English version "for" indicate a relationship. It can therefore be concluded that the foreign taxes referred to in subsection 126(1) (and with the words "non-business-income tax paid by a taxpayer for a taxation year to the government of a country other than Canada . . . ", as defined by subsection 126(7)), are taxes paid to the foreign state in relation to a particular taxation year and not the taxes paid in the course of, or during, the taxation year as suggested by the appellant.

[58] If Parliament had intended that the foreign taxes paid in the year be taken into account (or, in French, the foreign taxes paid "*au cours d'une année*") when the foreign tax credit is computed and not the foreign taxes paid for the year (in French, "*pour l'année*"), it would have clearly indicated this, as well as at par. 2. In fact, section 2 uses the words "in the year" (in French, "*au cours de l'année*") and "for the year" (in French, "*pour l'année*"). The same is true of section 40, among others, where we find the words "for the year" and "during the year."

Context:

[59] Subsection 2(1) and section 3 appear in Part 1 of the Act, and this Part is entitled "Income Tax." They expressly provide that tax liability is determined for each taxation year and that the computation of income takes into account the income from said taxation year.

[60] Under subsection 2(1) in Division A, "Liability for Tax": "An income tax shall be paid . . . on the taxable income for <u>each taxation year</u> of every person resident in Canada at any time <u>in the year.</u>" [Emphasis added.]

[61] Section 3 in Division B, "Computation of Income," provides that a taxpayer's income <u>for a taxation year</u> includes the "total of all amounts each of which is the

taxpayer's income for the year . . . from a source inside or outside Canada . . ." [Emphasis added.]

[62] Taxable income is determined in accordance with the rules in Division C, "Computation of Taxable Income," at sections 110 et seq. of this same Part I. Tax is computed by taking into account the taxable income in accordance with the rules in Division E, "Computation of Tax," of Part I, the division containing section 126.

[63] The scheme of the Act and these provisions clearly indicate that foreign-source income is included in computing the income of a taxpayer (Canadian resident) for a particular taxation year and that this income is taken into account during the determination of taxable income with which the tax for that same taxation year is computed. The provisions on the foreign tax credit are found in the same part of the Act, that is, Part I. Therefore, the taxation year covered by the provisions on the foreign tax credit must be the same taxation year for which the taxable income and the taxes payable to Canada are determined and computed. Similarly, it would be consistent with the scheme of the Act that the foreign taxes taken into account in computing the foreign tax credit be for the same income as that included in computing the Canadian taxable income.

[64] Accordingly, in *Zong v. The Queen*, 2019 TCC 270, the Court recently upheld the principle that "[g]enerally, taxpayers in Canada are permitted to deduct, as foreign tax credits, taxes paid to a foreign government where taxes are paid on the same income otherwise taxable in Canada" (section 1). [Emphasis added.]

[65] It would be contrary to the scheme of the Act that a taxpayer be required to add to his or her income, when computing the Canadian tax, the foreign income for a particular taxation year under section 3 and that the tax payable to Canada on the taxable income be computed taking into account this same foreign income but that the foreign tax credit take into consideration the foreign tax paid outside of Canada on income from a different taxation year, income that would not have been included in computing the Canadian taxable income for the particular taxation year.

[66] This is what is the appellant is attempting in this appeal: for the 2018 taxation year, Mr. Marin would like to be able to take into account, in the computation of the foreign tax credit amount, taxes that he paid to the French State during the year 2018 even though these taxes were the taxes owing to the French State on the 2017 income, despite the fact that, under the Act, for the 2018 taxation year, Mr. Marin must include in his income for Canadian tax the 2018 income and not the 2017 income.

Purpose (purposive part of the analysis)

[67] In the purposive part of the analysis, the Court must seek to ascertain the purpose of the provision. To this end, the Court can examine the historical context, extrinsic materials and developments of the Act. This analysis shows that the purpose of section 126 is to avoid double taxation when foreign-source income is taxed both inside and outside Canada. It is therefore clear that the same income must be double taxed in order for a foreign tax credit to be granted.

[68] The first version of a foreign tax credit appeared in the *Income War Tax Act* (S.C. 1917, 7-8 Geo. V, c. 28, paragraph 4(5)(b), as amended by S.C. 1919, 9-10 Geo. V, c. 55, subsection 3(3)). The Minister of Finance at the time, Sir Thomas White, stated the following during the 1919 budget speech:

> Several amendments which the administration of the Income Tax Act has shown to be desirable will be submitted. The question of double taxation has given considerable difficulty. In view of the time which would be required to make international agreements respecting the matter we have thought it advisable to take the lead and provide for a deduction from the sum payable by a resident of Canada under our income tax legislation of the amount paid by him elsewhere in the British Empire upon income thence derived. We shall also provide for a similar deduction in respect of income derived from a foreign country extending similar exemption upon income derived from Canadian sources.
>
> [Emphasis added]
>
> Je soumettrai plusieurs modifications dont l'application de la loi de l'impôt sur le revenu a démontré l'opportunité. La question du double impôt a causé bien des ennuis. Vu le temps qu'il faudra pour conclure des arrangements internationaux à ce sujet, nous avons cru bon de prendre les devants et de permettre, sous le régime de notre loi d'impôt sur le revenu, à une personne qui habite le Canada de défalquer du montant qu'elle a à verser la somme qu'elle paie dans une autre partie de l'empire britannique sur la part de son revenu qu'elle y retire.
>
> Nous décréterons aussi une déduction semblable relativement au revenu retiré dans un pays étranger qui permettra la même déduction eu égard au revenu provenant du Canada.
>
> [Non souligné dans l'original]

[69] The purpose of this provision was therefore to prevent double taxation. In addition, the amount that could be deducted from the Canadian tax could not exceed the tax payable to Canada on this same income, which implies that Canadian and foreign taxes were based on the same income.

[70] The 1984 technical notes published by the Department of Finance (Canada, Department of Finance, *Technical Notes to Draft Amendments to the Income Tax Act*, the Honourable Marc Lalonde, Ottawa, April 25, 1984) in regard to section 126 are to the same effect:

> Residents of Canada are subject to tax under the Income Tax Act on their worldwide income. In order to prevent double taxation where foreign-source income is also taxed in another country section 126 permits a credit against tax for income taxes paid to a foreign jurisdiction. The foreign tax credit may not exceed the amount of Canadian tax otherwise payable on the foreign-source income.
>
> [Emphasis added]
>
> En vertu de la Loi de l'impôt sur le revenu, les résidents du Canada sont assujettis à l'impôt sur leurs revenus de toutes provenances. Pour éviter la double imposition, lorsque les revenus étrangers sont également imposés dans un autre pays, l'article 126 de la Loi prévoit un crédit d'impôt au titre de l'impôt payé à une administration étrangère. Le crédit pour impôt étranger ne peut cependant pas dépasser le montant de l'impôt canadien payable par ailleurs sur le revenu étranger.
>
> [Non souligné dans l'original]

[71] The courts also have concurrent findings that the purpose of section 126 is to avoid double taxation (*Zhang v. The Queen*, 2007 TCC 634, at par. 10; *Arsove v. The Queen*, 2016 TCC 283, at par. 20). The case law also holds that this double taxation necessarily implies taxation of the same income. Accordingly, the Federal Court of Canada, Court of Appeal, in *R. v. Bank of Nova Scotia*, [1982] 1 F.C. 311, stated the following about subsection 126(2) (which provides for a credit for taxes paid on business income):

> [TRANSLATION] . . . In my view, the legislature clearly intended that paragraph 126(2)(a) protect the Canadian resident from double taxation by prescribing a tax credit based, for a specified taxation year, on the amount of tax payable based on the income earned outside of Canada during that year, without taking into account the time when, under foreign legislation, this foreign tax becomes payable . . . (p. 317)
>
> [TRANSLATION] . . . The intent of this subsection is to protect the taxpayer from double taxation in the event that he or she is already subject to tax in a foreign country . . . (p. 320)
>
> [Emphasis added.]

[72] Lastly, in *4145356 Canada Ltd. v. The Queen*, 2011 TCC 220 (at par. 70), the Court also stated that the purpose of the foreign tax credit is to avoid taxing the same income twice:

> . . . It seems to me that the purpose of section 126 is to avoid double taxation of the same income and . . .
>
> [Emphasis added.]

[73] Therefore, the textual, contextual and purposive analysis of subsection 126(1) confirms the interpretation that a foreign tax credit will only be granted if the same income is taxed both inside and outside of Canada. As the respondent contends, only the foreign tax paid for a particular taxation year can be deducted from the tax otherwise payable to Canada for that same taxation year, and these taxes must be for the same income. Therefore, Mr. Marin would have been entitled in Canada to a foreign tax credit for the 2018 taxation year had he indeed paid tax to the French State on the 2018 income. However, the evidence has shown that Mr. Marin did not pay tax in France on the 2018 income. Given that Mr. Marin was not taxed on the 2018 income by both France and Canada, he cannot claim the foreign tax credit for the 2018 taxation year, even though he paid taxes in France during the year 2018, as these taxes concerned the 2017 income.

VII. DECISION

[74] For these reasons, the appeal is dismissed with costs to the respondent computed in accordance with Schedule II, Tariff B of the *Tax Court of Canada Rules (General Procedures)*.

Signed at Ottawa, Canada, this 13th day of May 2019.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 15th day of August 2022.
François Brunet, Revisor

Appendix A

Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.)

PART I
Income Tax

DIVISION A
Liability for Tax

Tax payable by persons resident in Canada

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.

Taxable income

(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.

Tax payable by non-resident persons

(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,

at 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.

DIVISION B

PARTIE I
Impôt sur le revenu

SECTION A
Assujettissement à l'impôt

Impôt payable par les personnes résidant au Canada

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.

Revenu imposable

(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.

Impôt payable par les non-résidents

(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.

SECTION B

Computation of Income

Basic Rules

Income for taxation year

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 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,

(b) determine the amount, if any, by which

(i) the total of

(A) all of the taxpayer's taxable capital gains for the year from dispositions of property other than listed personal property, and

(B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,

exceeds

(ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer's allowable business investment losses for the year,

Calcul du revenu

Règles fondamentales

Revenu pour l'année d'imposition

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 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;

b) le calcul de l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

(i) le total des montants suivants :

(A) ses gains en capital imposables pour l'année tirés de la disposition de biens, autres que des biens meubles déterminés,

(B) son gain net imposable pour l'année tiré de la disposition de biens meubles déterminés,

(ii) l'excédent éventuel de ses pertes en capital déductibles pour l'année, résultant de la disposition de biens autres que des biens meubles déterminés sur les pertes déductibles au titre d'un placement d'entreprise pour

(c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the deductions permitted by Subdivision E in computing the taxpayer's income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a), and

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property or the taxpayer's allowable business investment loss for the year,

and for the purposes of this Part,

(e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and

(f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

l'année, subies par le contribuable;

c) le calcul de l'excédent éventuel du total établi selon l'alinéa a) plus le montant établi selon l'alinéa b) sur le total des déductions permises par la sous-section E dans le calcul du revenu du contribuable pour l'année (sauf dans la mesure où il a été tenu compte de ces déductions dans le calcul du total visé à l'alinéa a));

d) le calcul de l'excédent éventuel de l'excédent calculé selon l'alinéa c) sur le total des pertes subies par le contribuable pour l'année qui résultent d'une charge, d'un emploi, d'une entreprise ou d'un bien et des pertes déductibles au titre d'un placement d'entreprise subies par le contribuable pour l'année;

Pour l'application de la présente partie, les règles suivantes s'appliquent :

e) si un montant est calculé selon l'alinéa d) à l'égard du contribuable pour l'année, le revenu du contribuable pour l'année correspond à ce montant;

f) sinon, le revenu du contribuable pour l'année est réputé égal à zéro.

PART XVII
Interpretation

Definition of *taxation year*

249(1) In this Act, except as expressly otherwise provided, a **taxation year** is

(a) in the case of a corporation or Canadian resident partnership, a fiscal period;

(b) in the case of a graduated rate estate, the period for which the accounts of the estate are made up for purposes of assessment under this Act; and

(c) in any other case, a calendar year.

PARTIE XVII
Interprétation

Sens de *année d'imposition*

249(1) Dans la présente loi, sauf disposition contraire expresse, l'année d'imposition correspond :

a) dans le cas d'une société de personnes résidant au Canada ou d'une société, à l'exercice;

b) dans le cas d'une succession assujettie à l'imposition à taux progressifs, à la période pour laquelle les comptes de la succession sont arrêtés pour l'établissement d'une cotisation en vertu de la présente loi;

c) dans les autres cas, à l'année civile.

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APPEARANCES:

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