

CUSTOMS AND EXCISE

EXCISE TAX ACT

Appeal from Tax Court of Canada (T.C.C.) decision (2017 TCC 29) wherein T.C.C. finding that appellant is a “loan corporation” for purposes of *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, S.O.R./2001-171 (Attribution Regulations), dismissing appellant’s appeal of reassessment made under *Excise Tax Act*, R.S.C., 1985, c. E-15 (Act) — Appellant Crown corporation governed by *Farm Credit Canada Act*, S.C. 1993, c. 14 — Principal business making of loans — Appellant filing its GST/HST returns for three reporting periods as general corporation under Attribution Regulations — Canada Revenue Agency reassessing returns on basis that appellant a loan corporation in 2012 — T.C.C. finding appellant a “selected listed financial institution” (SLFI) under “special attribution method” rules (SAM rules) — Attribution Regulations part of SAM rules, whereby financial institution’s activities allocated to province where its financial services are consumed — Question before T.C.C. whether appellant general corporation under Attribution Regulations, s. 23 or loan corporation under Attribution Regulations that were in force during reporting period in question (Old Attribution Regulations), s. 11 — T.C.C. concluding, inter alia, that Attribution Regulations not limiting term loan corporation to institutions accepting deposits from public and to find so would be tantamount to a legislative amendment — T.C.C. ultimately concluding that textual, contextual, purposive analysis of Attribution Regulations leading to conclusion that term loan corporation therein referring to corporation whose principal business is the lending of money — Issue whether T.C.C. erring in finding that appellant loan corporation for purposes of Attribution Regulations — T.C.C. not erring in finding that appellant a loan corporation for purpose of Attribution Regulations — Nothing in term “loan corporation” meaning anything other than corporation giving loans — No references in text to regulated entities or to deposits — Fact that term “loan corporation” defined a certain way in a particular series of legislation not meaning that it has an accepted legal meaning — Intention of other legislatures in defining loan corporation a certain way, for specific purpose not attributing same intention to Parliament — Act, s. 149(1)(a)(ii) explicitly limiting trust corporations to those authorized under laws of Canada or province while s. 149(1)(a)(viii) placing no such restriction on person whose principal business is the lending of money — Parliament not intending to place such limitation on meaning of “loan corporation” — Parliament also restricting meaning of related terms in Act, related legislation — General rule in Attribution Regulations, s. 8 not enough to capture appellant’s activities — Attribution Regulations, ss. 9–13 referring to types of financial institutions based on nature of their business — No indication that financial institutions should be taxed according to their regulatory status — Interpreting term “loan corporation” as requiring deposits from the public creating situation where some lenders, including appellant, would have advantage over those taking deposits — Appellant competing with private financial institutions subject to attribution percentage for loan corporations — Parliament not intending to give appellant this benefit — Appeal dismissed.

FARM CREDIT CANADA V. CANADA (A-105-17, 2017 FCA 244, Near J.A., judgment dated December 12, 2017, 22 pp.)