

## INCOME TAX

### ASSESSMENT AND REASSESSMENT

Appeal from Tax Court of Canada (T.C.C.) decision (2017 TCC 84) confirming reassessments issued by Minister of National Revenue (Minister) under General Anti-Avoidance Rule found in *Income Tax Act*, R.S.C., 1985 (5th Supp.), c.1, s. 245 with respect to appellant's 2005, 2006, 2007 taxation years — T.C.C. finding that series of transactions which allowed taxable dividends received by Satoma Trust to be transformed into tax-paid amounts without any tax actually being paid resulted in abuse of provisions relied upon to achieve goal, specifically Act, ss. 75(2), 112(1) — Mr. Pilon, shareholder in Gennium produits pharmaceutiques inc. (Gennium), seeking to expand business operations — Ensuring that Gennium legally separate from any corporate entity involved in venture by setting up trust (Satoma Trust) with right of reversion as contemplated by Act, s. 75(2) — 9134-1024 Québec Inc. (9134) designated as beneficiary under Satoma Trust — Satoma Trust subsequently using donated amount to purchase shares in 9163-9683 Québec Inc. (9163) — Transaction giving rise to possibility that shares reverting back to 9134 with result that any income derived therefrom, including dividend income, attributable to 9134 — Series of transactions undertaken; ultimately allowing 9134 to claim intercorporate dividend deduction under Act, s. 112(1) — T.C.C. concluding, *inter alia*, that application of attribution rule found in Act, s. 75(2) ensuring that neither Satoma Trust nor its beneficiaries would be subject to tax on taxable dividends it received, regardless of how appellant choosing to use funds — Concluding that both ss. 75(2) (anti-avoidance rule), 112(1) (preventing double taxation) frustrated in this case — Their combined use allowing for surplus of Gennium to find way into Satoma Trust without tax liability being incurred by beneficiaries, which was against purpose of both provisions — Main issues whether T.C.C. erring in holding that tax benefit established even though tax-free distribution by trust yet to be made; whether provisions relied upon to achieve tax benefit abused — Appellant not showing that T.C.C. committing error in holding that tax benefit achieved — Obtaining tax benefit when attribution rule provided for in s. 75(2) becoming operational — Suggestion that no tax benefit arising before tax-free distribution made to individual beneficiaries ignoring fact that reassessments directed at Satoma Trust — Combined use of ss. 75(2), 112(1) giving rise to abuse — Abuse arising when optional deduction provided for under s. 112(1) claimed — S. 75(2) anti-avoidance provision designed to prevent income splitting — Object, spirit, purpose of s. 112(1) to allow dividends to be passed on tax-free within corporate groups subject to tax being eventually paid when dividends reaching final recipients — Objective frustrated since dividends could now be passed on to beneficiaries without tax — S. 104(2), providing that trust deemed to be an individual for purposes of computing tax liability, not engaged — S. 104(13)(a), providing that trust distributions having to be included in beneficiaries' income where amounts so distributed "would be the trust's income", also frustrated — T.C.C. properly rejecting argument that same result could have been achieved by alternative means, correctly holding that Minister succeeding in demonstrating abuse — Appeal dismissed.

FIDUCIE FINANCIÈRE SATOMA V. CANADA (A-189-17, 2018 FCA 74, Noël C.J., judgment dated April 10, 2018, 19 pp.)