

The Empire Strikes Back: Attorney General of Canada Files Response in Tavares' Appeal

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The captain of the Toronto Maple Leafs (the "**Leafs**"), John Tavares ("**Tavares**"), is currently in the process of appealing a Notice of Reassessment that was issued by the Canada Revenue Agency ("**CRA**") with respect to his 2018 income. The Notice of Reassessment required Tavares to pay approximately \$8 million in additional tax and interest charges on his signing bonus of USD \$15.25 million that he received in July 2018 when he signed a 7-year contract with the Leafs. Tavares filed an appeal of the reassessment, and the Attorney General of Canada ("**AGC**") has now filed a Reply to Tavares' appeal.

To recap, Tavares signed his 7-year contract with the Leafs worth USD \$77 million on 1 July 2018. Tavares had played the previous 9 seasons with the New York Islanders and was still living in New York at the time he signed the contract. As part of his compensation, Tavares received a signing bonus of USD \$15.25 million on 1 July 2018 (the "**2018 Amount**"). Maple Leafs Sports and Entertainment ("**MLSE**") withheld 15% of the 2018 Amount and remitted it to the CRA in accordance with Article XVI of the Convention Between Canada and the United States of America (the "**Treaty**").^[1] Tavares paid taxes on the 2018 Amount in the US, as he was a US Person at the time the 2018 Amount was paid.

Article XVI of the Treaty states that where an amount is paid by a Canadian resident to a US resident as an inducement to sign an agreement relating to the performance of the services of an athlete, and such amounts are not considered salaries, wages or other similar remuneration in respect of employment under Article XV of the Treaty, the maximum tax rate on the gross amount of such payment is 15%. Tavares argued that the 2018 Amount received on 1 July 2018, was an inducement to sign with the Leafs over the other teams bidding for his services and it did not form part of his salary, wages or other remuneration. As such, he was entitled to the reduced treaty tax rate of 15%. To read more about Tavares' appeal, see our earlier [blog](#).^[2]

In his Reply to Tavares' appeal, the AGC takes the position that Tavares was not entitled to the relief of the reduced treaty rate of 15%. The AGC's reasoning is as follows:

1. The AGC argues that Tavares was a resident of Canada for tax purposes on 1 July 2018, and therefore the Treaty does not apply. The AGC pleads that throughout the 2018 taxation year, Tavares maintained residential ties with Canada, regularly visited Canada, and was present in Canada for 183 days or more. The AGC provides three rationales under the *Income Tax Act* (Canada) (the "**ITA**")^[3] by which he argues that the full 2018 Amount should be included in Tavares' income for 2018:
 - a. The 2018 Amount formed part of Tavares' salary, wages, and other remuneration for 2018 while he was a resident of Canada.^[4]
 - b. The 2018 Amount was deemed to be remuneration for Tavares' services rendered during his employment with MLSE.^[5]
 - c. The 2018 Amount was considered to be an employment benefit to Tavares.^[6]
2. The AGC further argues that, if Tavares was found to be a non-resident of Canada at the time the 2018 Amount was paid, Tavares would still not be entitled to rely on Article XVI of the Treaty because the 2018 Amount was not paid to Tavares as consideration for entering into, or an inducement to sign, the contract with the Leafs. Rather, the entire 2018 Amount was an amount received under Tavares' contract with the Leafs as remuneration from the duties of employment for services to be performed in Canada. Accordingly, the AGC argues that 2018 Amount is to be included in Tavares' taxable income earned in Canada.^[7]

The AGC asks that the appeal be dismissed with costs payable to the AGC.

Only time will tell what the Tax Court of Canada will decide in this case, but in the meantime, it appears athletes thinking of playing professional sports in Canada may continue to be deterred by this tax headache. A PDF of this blog is available for download [here](#).

If you have any questions about the above information, please contact a member of the Gardiner Roberts LLP's experienced Tax and Estates Planning Group.

[1] <https://www.canada.ca/en/department-finance/programs/tax-policy/tax-treaties/country/united-states-america-convention-consolidated-1980-1983-1984-1995-1997.html>.

[2] <https://grllp.com/are-signing-bonuses-bad-for-canadas-sports-franchises>.

[3] *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) [ITA].

[4] ITA, ss. 5(1).

[5] ITA, ss. 6(3).

[6] ITA, para. 6(1)(a).

[7] ITA, s. 114, subparas. 115(1)(a)(v) and 115(2)(c.1)(ii) and para. 115(2)(e).

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