%ACTS

- r. B D
Bel#/e() - ona1o

- I;   Ca8$an Islands

D%R   Countr8 A

n9 ' ro ' ert8

%ACTS

- r. B

- I;   ; ux

3 5

D%R   Countr8 A

@BNC   Countr8 A

n9 ' ro ' ert8

ISSUES

, Is 1a ' #ta() 9a#n taxa7()e under do
Countr8 AE
, Is 1a ' #ta() 9a#n exe $ ' t fro $ do $ est#1 tax under
Art#1()e : *(4+ of Countr8 AF ; uxe $ 7our9 treat8E
           GAAR a ' '()8E
           se ru()e #n t6e treat8E

)

DECISION

Ta- Court of Canada #eld:
, Ca ' #ta() 9a#n #s exe $ ' t under A
treat8
, GAAR does not a ' '()8
    H No a?o#dan1e transa1t#on on t6e e?#den1e
        xe $ 7our9 <as ' r#$ ar#()8 to
        #n#n9 o ' erat#ons+
        e : *(4+ Ise()e1t#on of a treat8 to
        s o<n 1annot 7e ?#e<ed as

G

2

Art#1le : *(4+(Canada ; uxe $

ANA;YSIS: Do$est#1 ;a<

, Is 1a'#ta& 9a#n taxa7&e under Cc
do$est#1 &a<E

H Does Countr8 A #$ 'ose tax on 9a
d#s'osa& of #$ $o?a7&e 'ro'ert8 s#tuated #n Countr8
AE

ose tax on d#s'osa& of s6ares #n
?e t6e#r ?a&ue fro$ #$ $o?a7&e

Tax Payer's Arguments

, Tax Payer relies on Articles : *(4
, What is the object and purpose
and (A+E
, Does the transaction frustrate or defeat the
*(4+E

:)

Tax Payer's Arguments

, - I; was resident of ; uxe $ 7our
; uxe $ 7our9 la< and under Art
, Treaty does not contain any
7enefits provision or general anti-abuse rule
contain any inherent anti-abuse
once it is only possible of 7ot6

: G

Tax Payer's Arguments

, Purpose of Articles : *(4+ and (A
source country to tax gains fro
su7stantial interests in co $ pan
su7stantial interest is : 5 or $ ore
Only residence country can tax the gain under

ns is in accordance <ith the

: 3

5

Go?ern $ ent's Ar9u $ ents

, Tax ' a8er a12u#red ;uxe $ 7our $ ... to 9et treat8 7enef#ts
, Res#den1e <as a12u#red art#f#1#a... 7efore d#s ' osa&
... <as not a real &e9#t#$ate ... our9 and #s not ent#t&ed to t6e ... 8

2:

Go?ern $ ents Ar9u $ ents

, Art#1&e :*(4+ and (A+ do not 1on... #n1&ude art#f#1#a& transa1t#ons to tax ' a8er's #nterest to &ess t6an...
, Transa1t#on <as ar $'s &en9t6 7ut In1o <as taxF ... ' '&es to den8 treat8 7enef#ts

22

Go?ern $ ents Ar9u $ ents

, No 1onf&#1t 7et<een Countr8 A&s... treat8
, Based on ex ' &#1#t state $ ent #n t... Co $ $ entar8 on Art#1&e :
... a ' '&#es to t6e #nter ' retat#on ...nto 7efore 2 *

2*

Go?ern $ ents Ar9u $ ents

, If t6e GAAR does not a ' '&8(1a... #nter ' reted to den8 treat8 7enef...
, Para9ra ' 6 3.A:
   H #s one of t6e ' ur ' oses of t6e transa1t#on to 9et treat8 7enef#tsE and
   ...ef#ts frustrate ' ro?#s#ons of treat8E

24

Treat8 O?err#de

,   So$e 1ountr#es ex'#1#t&8 'ro?#d
    do$est#1 &a< t6at t6e GAAR 'r
    'ro?#s#ons of tax treat#es #n ord
    1ourts fro$ 9#?#n9 treat8 re&ef
    So$e 1ountr#es 1annot use do$est#1 &a< to

2A

T#an. you