September 20, 2018

Stephen Ruby Speaks to Bloomberg BNA About Tax Court's Ruling on Tax Avoidance

In an article published this week in Bloomberg BNA, Davies partner Stephen Ruby speaks about the Tax Court of Canada's latest ruling on the government's use of general anti-avoidance (GAAR) rules.

In *Loblaw Financial Holdings Inc. v The Queen*, the Court rejected the Canada Revenue Agency's argument that using an offshore banking affiliate in a low-tax jurisdiction to manage investments constituted tax avoidance. According to Stephen, the tax authority's increasing use of the GAAR as a "residual catch-all" is a problem because whether it applies is often "in the eye of the beholder." He believes there's a risk that the CRA's overuse of the provision, particularly in "hard facts" cases, will produce a body of case law that can be used against the tax agency when it tries to use the GAAR in a legitimate situation.

Despite rejecting the GAAR argument, the Court largely upheld the tax agency's reassessments after finding Loblaw improperly relied on a tax exemption available only to regulated foreign banks. Stephen is particularly surprised by the Court's finding that the source of equity funds for an offshore bank like Loblaw must come from arm's-length parties. "It's eminently appealable," he says.