

Cameco and Cash-Boxes

POSTED ON DEC. 10, 2018

By



NATHAN BOIDMAN

To the Editor:

The importance of the point implicitly made by Steve Suarez in his comprehensive report on the [Cameco](#) case — that the Canadian court effectively rejected the OECD/base erosion and profit-shifting “cash-box” outrage — cannot be overemphasized. (See [“The Cameco Transfer Pricing Decision: A Victory for the Rule of Law and the Canadian Taxpayer,”](#) *Tax Notes Int’l*, Nov. 26, 2018, p. 877.)

As I (together with Michael Kandev) have previously written in these pages ([“The OECD’s Cash-Box Notion Is ‘Fundamentally Flawed,’ Writers Say,”](#) *Tax Notes Int’l*, Aug. 15, 2016, p. 619), the “cash-box” notion not only effectively makes an investment manager the majority partner in the property being managed and reduces the interest of the party whose capital is at risk to a “risk-free” return, but totally ignores the discipline of investment markets and arrangements that sees the brightest and best private equity managers earn no more than a 20 percent “carry.”

But I would not have expected less from Canadian courts — and in that respect the outcome in *Cameco* is not at all surprising. The issue is squarely dealt with in paragraphs 455 and 456 of the judgment where taxpayer expert witnesses were quoted as saying (in paragraph 455), “Thus to argue, as [the Canada Revenue Agency] does, that the provision of administrative services to investors like CEL who supply risk capital is the equivalent of bearing the risks that capital is subject to is to denigrate the role of risk bearing while putting the engagement in routine functions on a pedestal,” and (in paragraph 456), “Even if the CRA’s assertion that CCO monitored and managed CEL’s price risk is true, this is irrelevant to the question as to who bore the price risk. The CRA confuses risk monitoring with risk-bearing.”

Could anything be clearer?

Sincerely,

Nathan Boidman

Davies Ward Phillips & Vineberg LLP

Montréal

November 29, 2018

DOCUMENT ATTRIBUTES

MAGAZINE CITATION

TAX NOTES INTERNATIONAL, DEC. 10, 2018, P. 1055
92 TAX NOTES INTERNATIONAL 1055 (DEC. 10, 2018)

TAX ANALYSTS DOCUMENT NUMBER

DOC 2018-46893