



Tax Court of Canada

Financial Services: Canadian VAT (GST)

The Honourable Justice Steven D'Arcy

Financial Service

- Exempt Supply
- Defined in 123(1)
 - Specific inclusions
 - *Arranging for inclusion*
 - Specific exclusions
 - Exclusions for administrative services

Def'n of Financial Services

- Exchange, payment, receipt or transfer of money
- Operation of bank accounts, lending of money
- Various supplies relating to “financial instruments”
- Various supplies relating to insurance policies

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Def'n of Financial Services

- Any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued
- *Agreeing to provide or arranging for services set out in (a) to (i) of the definition*

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Def'n of Financial Services

- Exclusions
 - Payment or receipt of money as consideration
 - Providing advice, including professional services of an accountant, lawyer
 - Debt collection services
 - Numerous management or administrative services provided to investment plans and numerous services provided in respect of managing credit

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Def'n of Financial Services

- Exclusions
 - Provision of most services to an entity whose principal activity is the investing of funds if the service is provided by a person who provides management or administrative services to the entity

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Def'n of Financial Services

- Exclusions
 - Following services unless provided by a “person at risk”
 - The transfer, collection or processing of information
 - Any administrative service, including an administrative service in relation to the payment or receipt of dividends, interest, principal, claims, benefits or other amounts, other than solely the making of the payment or the taking of the receipt

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CIBC v. The Queen

- 2018 decision of the Court, 2018 TCC 109 (CanLII)
- Issue in appeal was whether the fees CIBC paid to Visa in respect of the use by a CIBC customer of a visa credit card was consideration for an exempt financial service.

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CIBC v. The Queen

- Participants in the Visa transactions
 - Cardholder
 - Merchant
 - Issuer
 - Acquirer
 - Visa

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CIBC v. The Queen

- Steps in relevant transactions
 - Cardholder presents Visa card to Merchant
 - Merchant's point of sale device transmits data to Acquirer
 - Acquirer prepares and submits authorization request to Visa
 - Visa routes request to Issuer (CIBC) for review
 - Issuer approves or denies.
 - Visa transmits approval or denial to Acquirer who transmits to Merchant

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CIBC v. The Queen

- Transactions after sale is completed
 - Merchant transmits to Acquirer record of completed transactions
 - Acquirer prepares a single daily batch file that it sends to Visa
 - Visa sorts batch file and prepares a single file for each Issuer, showing all clearing records and net settlement amount payable by Issuer
 - Issuer sends funds to Visa's designated settlement bank for deposit to Visa's settlement account

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CIBC v. The Queen

- Transactions after sale is completed.
 - Visa calculates and pays the settlement amount payable to each Acquirer
 - Acquirer calculates and pays amounts to merchant in respect of transaction records submitted by merchant
 - Issuer provides cardholder with statement of account and cardholder pays Issuer.

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CIBC v. The Queen

- Following fees are paid
 - Merchant to Acquirer
 - Acquirer to Issuer
 - Issuer (CIBC) to Visa
 - Cardholder to CIBC
- Only fees at issue were fees paid by CIBC to Visa

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CIBC v. The Queen

- Parties agreed
 - that Visa provided a bundle of rights and services to CIBC
 - Such bundle constituted a *single compound supply*
- *Single compound supply* – single supply comprised of several distinct but indivisible components that are intertwined, interdependent and integral to each other

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CIBC v. The Queen

- First issue: what supply is being made?
- Court – Characterising the supply Visa is providing involves finding the predominant element of the supply being provided, as opposed to the elements of the supply that are merely ancillary.
- Asked parties to provide written submissions

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CIBC v. The Queen

- Appellants – Predominant element, supply of acting as a financial intermediary by assisting in the transfer of money between the Issuers, Acquirers and Merchants
- Respondent – Multiple predominant elements such as the right to use the Visa brand name, data transmissions services and the right to access Visa's proprietary network.

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CIBC v. The Queen

- Court looked at end result of services and concluded that the supply was the supply of a payment platform which allowed Visa to facilitate the transactions between CIBC, card holders, acquirers and merchants

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CIBC v. The Queen

- Next issue, was the supply included in paragraphs (a) to (m) of the definition of financial service.
- The “inclusion paragraphs”.

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CIBC v. The Queen

- Court, supply was included in (l) and (i)
- Supply in (l) since it constituted the arranging for the credit services offered by CIBC, through acting as an intermediary in the transfer of money.
- Also included in (i) as a service provided pursuant to the terms and conditions of any agreement relating to payments for which credit card voucher has been issued

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CIBC v. The Queen

- Last issue, if supply in under (l) and (i) was it excluded under (n) to (t).
- Court – service was excluded from the definition of financial service due to paragraph 4(2)(b) of the regulations since it constituted an administrative service.
- As a result supply was a taxable supply

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CIBC v. The Queen

- When making its decision with respect to the administrative service issue, the Court relied on *Great-West Life Assurance Co. v. the Queen*, 2015 TCC 225.
- Here a third party, Emergis, managed the payment of drug benefit payments to members of a benefit plan.
- Court found Emergis provided taxable administrative services.

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