

CANADA / JUDGMENT

# Teck Corp. v. British Columbia

2002 BCSC 1459

## COURT

Supreme Court of British Columbia

## DECIDED

17 October 2002

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## Source record

2002BCSC1459

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| Citation: | Teck Corporation v. HMTQ                                                                |
| Date:     | 20021017<br>2002 BCSC 1459                                                              |
| Docket:   | L002392<br>Registry: Vancouver<br>IN THE SUPREME COURT OF BRITISH COLUMBIA              |
| BETWEEN:  | TECK CORPORATION<br>APPELLANT                                                           |
| AND:      | HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE<br>OF BRITISH COLUMBIA<br>RESPONDENT |

## REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE LOWRY

Counsel for the Appellant:

J.W. Mitchell, Q.C.

I.J. Gamble

Counsel for the Respondent:

I.T. Torrie

E.A. Douglas

Date and Place of Hearing:

September 17, 2002

**Vancouver, BC**

- [1] Teck Corporation ("Teck") appeals from a decision of the Minister of National Revenue denying a request for the revision of its income for the years 1985 to 1992 upon which it paid tax under s. 8 of the Income Tax Act (British Columbia), R.S.B.C. 1979, c. 190 (the "Provincial Act"). At issue is whether income or profit-based mining taxes paid to other provinces were deductible in the computation of income tax payable by Teck to this province under that Act.
- [2] Section 8 is aptly described by counsel for Teck as a wonder to behold. Subsections (1) and (2) bear on the issue:
- (1) There shall be deducted from the tax otherwise payable by the taxpayer under this Part for a taxation year the amount, if any, by which
- (a) the tax otherwise payable for the year by the taxpayer under this Part exceeds
- (b) the tax that would be payable for the year under this Part if his taxable income under this Part for the year was the amount, if any, by which
- (i) the aggregate of all amounts each of which is his taxable income under this Part for the year or for any preceding year ending after May 5, 1973 computed as though section 12(1)(o), 18(l)(m), other than paragraph (m) applies to an amount paid or payable under the Mining Tax Act, the Mineral Resource Tax Act or any other prescribed Act, or royalty for 1976 under the Mineral Royalties Act, 20(l)(v.1), 69(6) or 69(7) of the federal Act had not been enacted, except as those provisions apply to parts IV and XXVI of the federal regulations, exceeds
- (ii) the amount determined under subparagraph (i) for the immediately preceding taxation year.
- (2) There shall be added to the tax otherwise payable by the taxpayer under this Part for a taxation year the amount, if any, by which
- (a) the amount determined under subsection (1)(b), exceeds
- (b) the amount determined under subsection (1)(a).
- [3] The focus of the appeal is the interpretation to be given to s. 18(1)(m) of the Income Tax Act, R.S.C. 1985 (5th Suppl.), c. 1 (the "Federal Act") in the context of the notional re-computation of taxable income under s. 8(1)(b)(i) of the Provincial Act. Under the general heading "Deductions", s. 18(1) of the Federal Act provides:
- (1) In computing the income of a taxpayer from business or property no deduction shall be made in respect of
- (m) any amount (other than a prescribed amount) paid or payable by virtue of an obligation imposed by statute or a contractual obligation substituted for an obligation imposed by statute to

(i) Her Majesty in right of Canada or a province,

as a royalty, tax (other than a tax or portion thereof that may reasonably be considered to be a municipal or school tax), lease rental or bonus or as an amount, however described, that may reasonably be regarded as being in lieu of any such amount, and that may reasonably be regarded as being in relation to

(iv) the acquisition, development or ownership of Canadian resource property, or

(v) the production in Canada of

(B) metal or minerals, other than iron or petroleum or related hydrocarbons, from a mineral resource in Canada to any stage that is not beyond the prime metal stage or its equivalent,

[4] Teck claims that s. 18(1)(m) was enacted, in part, to preclude the deduction of profit-based taxes in the computation of income tax payable under the Federal Act. This is said to have been done to stem the erosion of the federal tax base by increased provincial resource royalties and other forms of taxation that had been deductible. Teck says that because the re-computation under s. 8(1)(b)(i) of the Provincial Act is to be made on the basis that s. 18(1)(m) of the Federal Act was not enacted, except in respect of taxes payable to British Columbia, it is entitled to deduct profit-based taxes paid to other provinces.

[5] The Province maintains that s. 18(1)(m) has nothing to do with the deduction of profit-based taxes. It says that taxes of that kind were precluded under s. 18(1)(a) of the Federal Act which provides:

(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property,

[6] The contention is that profit-based taxes are not outlays made for the purpose of gaining or producing income. Rather, they are an expense incurred as a consequence of earning income from the business or property. The Province cites *Quemont Mining Corp. v. M.N.R.*, [1967] 2 Ex. C.R. 169 at para. 87-99, aff'd [1970] S.C.R. 511 as authority for this proposition.

[7] Mining profit-based taxes or taxes on income have, since 1985, been specifically addressed in s. 20(1)(v) of the Federal Act which replaced a similarly worded section in the previous consolidation of the Federal Act (see R.S.C. 1952, c. 148, s. 11(1)(p)). The present section provides:

(1) Notwithstanding paragraphs 18(1)(a), (b), and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source of such part of the following amounts as may reasonably be regarded as applicable thereto:

- (v) such amount as is allowed by regulation in respect of taxes on income for the year from mining operations;

Amounts that may be deducted have been prescribed by regulations promulgated under the Federal Act (see Income Tax Regulations, S.O.R./58-127, s. 701 and later, C.R.C., c. 945, s. 3900, as am. S.O.R./78-377, s. 13).

- [8] I do not see on what basis it can be said that s. 18(1)(m) of the Federal Act governed the deductibility of profit-based taxes from 1985 to 1992 when s. 20(1)(v) expressly provides for an exception to the prohibition in s. 18(1)(a).
- [9] As the Province points out, to the extent that s. 18(1)(m) applies to taxes, it applies, in material respects, to taxes in relation to the acquisition, development or ownership of Canadian resource property or production from a mineral resource in Canada. The taxes contemplated appear to be those relating to the actual production or ownership of certain resources, as opposed to taxes on income. Examples of such taxes are to be found in the provincial statutes requiring payments that are excluded for the purposes of the re-computation of income under s. 8(1)(b)(i) of the Provincial Act, including the Mineral Land Tax Act, R.S.B.C. 1996, c. 290, ss. 3 and 4 which impose taxes based on the ownership of mineral land or production areas, and the Mineral Tax Act, R.S.B.C. 1996, c. 291, ss. 2.2 and 2.3 which impose a tax on the production of mineral product or quarry materials.
- [10] I conclude that Teck is not entitled to deduct profit-based taxes paid to provinces other than British Columbia in the subject years in computing the income tax to be paid under s. 8(1) of the Provincial Act.

- [11] The appeal will be dismissed.

"P.D. Lowry, J."

The Honourable Mr. Justice P.D. Lowry

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