



Package and Bump transactions not subject to GAAR

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When BPC Properties Ltd. (BPC) and Oxford Properties Inc. (Oxford) entered into an agreement relating to the sale of Oxford to BPC in August 2001, Oxford agreed to complete a pre-closing reorganization of its business. Oxford dropped various properties down into several limited partnerships on a tax deferred basis by utilizing subsection 97(2) of the [Income Tax Act \(Canada\)](#) (the ITA), with those partnership interests subsequently being bumped under paragraph 88(1)(d) of the ITA.

After the completion of the purchase and sale transaction, BPC completed a second bump by transferring certain bumped interests into newly formed property-specific limited partnerships, and subsequently wound-up the upper-tier limited partnerships under subsection 98(3) of the ITA, using the bump rules in paragraph 98(3)(c) of the ITA.

More than three years later, some of the property-specific limited partnerships were sold to tax exempt entities.

CRA challenged this transaction by applying the general anti-avoidance rule in Section 245 of the ITA (GAAR), alleging an abuse of subsection 97(2) of the ITA, the bump rules, and the anti-avoidance rule in subsection 69(11) of the ITA. Subsection 69(11) contains a three-year limit such that it will only apply if a subsequent disposition occurs, or arrangements for the subsequent disposition are made, within three years of the original rollover.

In rejecting CRA's application of GAAR, the Tax Court held that GAAR did not apply to the "bump" of the partnership interests under paragraph 88(1)(d) and subsection 98(3). The Tax Court noted that parliament was aware of the three-year limitation at the time it extended the application of subsection 69(11) to tax exempt entities and thus parliament amended this subsection to include transfers to tax-exempt entities that occur within the three-year period. In the Tax Court's view, it is reasonable to conclude that parliament was of the view that transfers after this three-year period did not abuse subsection 97(2) of the ITA. The Tax Court held that the transactions did not result in abusive tax avoidance, and therefore GAAR did not apply.

The Crown has not yet indicated whether it plans to appeal the Tax Court's decision.

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