



International Fiscal Association



IFA Canada | YIN SESSION

Transfer Pricing: Law and Practice

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Agenda

- 1. Introduction**
- 2. Cameco Refresher**
- 3. Recent CRA/Finance Stirrings**
- 4. Observations on Recent Audit Activity**
- 5. Functional Interviews**
- 6. Limits on Obtaining Privileged Records or Accrual Papers**

Cameco Refresher

Facts:

1. **Cameco Corp. (“CC”)** is a **Canadian mining company**.
2. **CC** sold uranium to a wholly-owned European subsidiary, **Cameco Europe Ltd (“CEL”)** – **Low tax rate**.
3. **CEL** bought **Uranium** from **CC** and other third parties, and resold to **Cameco US**.

Cameco Refresher (cont.)

CRA Positions

- 1. Was the structure a “sham”?**
- 2. Did the sale of goods lack commercial rationale?**
- 3. Was the TP method used (Comparable Uncontrolled Price) the most appropriate?**

Current Outcome (Under Appeal)

- 1. Not a sham**
- 2. Commercial rationale existed**
- 3. The TP method was appropriate**

Cameco Refresher (cont.)

Practical Observations

1. **IC Agreements and operating in accordance with them is important**
2. **Canadian corporate parents are free to direct their business**
3. **Support your positions contemporaneously**

Recent CRA/Finance Stirrings

TPM-3 – Downward TP Adjustments

- **Removed from CRA website... But, appears it is becoming legislation**
 - **Nature and significance of potential legislation**
 - **Practical experiences**
 - **Tips and traps**

Observations on Recent CRA Audit Activity

- **CRA: BEPS has not substantially affected CRA's transfer-pricing practices (Feb 2019 Tor Centre TSO & PG Breakfast)**
- **Extremely broad audit requirements**
 - **Overbreadth/fishing and how to manage uncertainty**
 - **Understand all legal obligations**
- **Amendments to audit powers: “stop the clock” rule**
 - **Taxpayer resources; effects on treaty provisions**
- **Access to Information practices**

Functional Interviews

- **Unique context and practice points**
- **Effects on other audit areas**
- **Compelling oral interviews**
 - ***Cameco* audit requirement case**
 - **CRA public statements (vs. decision)**
 - **Appeal**

Privileged Records or Accrual Papers

- **Tax Accrual Working Papers and Self-Auditing**
 - *BP Canada vs. Atlas Tube*
- **Privilege matters! Some current/ongoing discussion points:**
 - **Concepts and controlling access**
 - **Intra-group sharing**
 - **Non-lawyer advisers**
 - **External financial auditors**
 - **Other interested service providers**