

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260204

Docket: A-165-25

Citation: 2026 FCA 24

**CORAM: WEBB J.A.
GLEASON J.A.
PAMEL J.A.**

BETWEEN:

MEGLOCAL CANADA ULC

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on February 4, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on February 4, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on February 4, 2026).

WEBB J.A.

[1] This is an appeal from the Order of the Tax Court of Canada quashing MEGlobal Canada ULC's (MEGglobal) appeal in relation to the reassessments of its 2008, 2010, and 2011 taxation years, without leave to amend (2025 TCC 50).

[2] MEGlobal's predecessor sold ethylene glycol products to a non-resident corporation with whom MEGlobal was not dealing at arm's length. The purchase price that was agreed upon was the resale price minus a discount of 10%. In March 2013, MEGlobal determined, based on an analysis that it had undertaken of its transfer pricing methodology, that the non-resident purchaser should have paid less for the ethylene glycol products — the resale price minus a discount of 15% instead of 10%.

[3] Following an audit by the Canada Revenue Agency, the Minister of National Revenue (Minister) reassessed MEGlobal's 2008, 2010 and 2011 taxation years based on upward transfer pricing adjustments made under subsection 247(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). MEGlobal filed notices of objection to the reassessments objecting to the upward transfer pricing adjustments and requesting a downward transfer pricing adjustment to reflect a selling price based on a 15% discount. In 2016, the Minister issued notices of reassessment to reverse the upward transfer pricing adjustments, thereby returning MEGlobal to its original filing position. The Minister refused the request for a downward transfer pricing adjustment.

[4] MEGlobal filed notices of objection to the 2016 notices of reassessment on the basis that the price at which the ethylene glycol products were sold for 2008, 2010, and 2011 should be reduced under subsection 247(2) of the Act. The only issue raised by MEGlobal was the requested downward transfer pricing adjustment.

[5] The Minister, by a letter dated October 29, 2018, denied MEGlobal’s request for a downward transfer pricing adjustment. MEGlobal filed an appeal with the Tax Court and a judicial review application with the Federal Court. This appeal to the Tax Court was quashed on the basis that the Tax Court does not have the jurisdiction to address the issues raised in the appeal.

[6] Subsection 247(10) of the Act stipulates that a downward transfer pricing adjustment can only be made if “in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made”:

An adjustment (other than an adjustment that results in or increases a transfer pricing capital adjustment or a transfer pricing income adjustment of a taxpayer for a taxation year) shall not be made under subsection 247(2) unless, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

Un redressement autre que celui qui donne lieu à un redressement de capital ou un redressement de revenu d’un contribuable pour une année d’imposition, ou qui augmente le montant d’un tel redressement, ne peut être effectué aux termes du paragraphe (2) que si le ministre estime que les circonstances le justifient.

[7] The majority of the Supreme Court of Canada in *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23 confirmed that the Tax Court does not have the jurisdiction to review the Minister’s decision to not allow a downward adjustment under subsection 247(10) of the Act:

[121]... when the Minister has exercised her discretion under s. 247(10) of the ITA to deny a taxpayer’s request for a downward pricing adjustment, that decision falls outside of the jurisdiction of the Tax Court in respect of an appeal, under statute, of the taxpayer’s assessment. As there is no express right of appeal

from this decision to the Tax Court, the proper forum to challenge the Minister's decision is the Federal Court, pursuant to its exclusive jurisdiction in judicial review under its home statute.

[8] The Tax Court, therefore, does not have the jurisdiction to review the Minister's denial of the downward transfer pricing adjustment requested by MEGlobal. Despite this lack of jurisdiction to review the Minister's decision, MEGlobal nonetheless argues that the Tax Court could determine whether applying subsection 247(2) of the Act, in isolation, would result in a downward transfer pricing adjustment. In general, subsection 247(2) of the Act provides, in part, that if the terms and conditions of a transaction entered into by a taxpayer and a non-resident person, with whom the taxpayer is not dealing at arm's length, differ from the terms and conditions that arm's length persons would have agreed upon, the terms and conditions will be adjusted to reflect those terms and conditions.

[9] However, subsection 247(2) of the Act cannot be read in isolation when the results of applying subsection 247(2) of the Act would reduce the income of the resident taxpayer. Even if subsection 247(2) of the Act, in isolation, would result in a downward transfer pricing adjustment, no such adjustment can be made without the opinion of the Minister as set out in subsection 247(10) of the Act.

[10] The Tax Court Judge noted in paragraph 8 of his reasons, that if MEGlobal's appeal is quashed, then the relevant taxation years would be statute barred from reassessment if MEGlobal is ultimately successful in obtaining an opinion from the Minister that the requested downward

adjustments should be made. However, the remedy that MEGlobal is seeking in this appeal, as set out in paragraph 86 of its memorandum, is not a stay of its appeal before the Tax Court until the judicial review application is heard and decided by the Federal Court, but rather an amendment to its notice of appeal to the Tax Court to request that the matter be referred back to the Minister for reconsideration and reassessment:

86. For the reasons set out above, the Appellant respectfully requests that this Court:

- a. allow this appeal from the Order;
- b. grant leave to the Appellant to amend its notice of appeal before the Tax Court to remove paragraph 58(a) (as the issue in that paragraph was decided in DCCU-SCC, and the only issue remaining in dispute is that set out paragraph 58(b)) and to clarify the relief sought in paragraph 71(a) as follows:

that its 2008, 2010, and 2011 Taxation Years be referred back to the Minister for reconsideration and reassessment on the basis that the correct application of s. 247(2) in these taxation years results in reductions to its taxable income by USD \$33,094,325 (CAD \$35,279,023), USD \$24,491,582 (CAD \$25,246,625) and USD \$30,377,605 (CAD \$30,045,553), respectively;

[Emphasis added by MEGlobal]

[11] The requested relief cannot be granted by the Tax Court. Even if the Tax Court were to find that the application of subsection 247(2) of the Act, in isolation, would result in the reductions as proposed by MEGlobal, the matter could not be referred back to the Minister for

reconsideration and reassessment, as no reassessment to reflect a downward transfer pricing adjustment could be issued in the absence of the opinion of the Minister that the circumstances are such that it would be appropriate to make such adjustments. The only relief that the Tax Court can grant in relation to the disposition of an appeal from a reassessment is set out in subsection 171(1) of the Act;

171 (1) The Tax Court of Canada may dispose of an appeal by	171 (1) La Cour canadienne de l'impôt peut statuer sur un appel :
(a) dismissing it; or	a) en le rejetant;
(b) allowing it and	b) en l'admettant et en :
(i) vacating the assessment,	(i) annulant la cotisation,
(ii) varying the assessment, or	(ii) modifiant la cotisation,
(iii) referring the assessment back to the Minister for reconsideration and reassessment.	(iii) déférant la cotisation au ministre pour nouvel examen et nouvelle cotisation.

[12] There is no authority to refer a matter back to the Minister for reconsideration of an issue that may lead to a reassessment, if the Minister exercises his discretion to allow a downward transfer pricing adjustment. As noted by the Supreme Court in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, at paragraph 44 “[a] court has jurisdiction if its authority extends to ‘the person and the subject matter in question and, in addition, has authority to make the order sought’”. Absent the authority to make the order sought, the Tax Court does not have the jurisdiction to address the issue raised by MEGlobal.

[13] It should also be noted that, in denying the requested downward adjustment, the Minister, in effect, also stated why the request would not be granted even if the appropriate transfer price was as proposed by MEGlobal (which the Minister also did not accept):

The request seeks a reduction of the reported taxable income as filed in the 2008, 2010 and 2011 taxation years in Canada only. While there is an alleged over-reporting of the income for Canadian tax purposes, there is no corresponding under-reporting of the income for UAE tax purposes since there is no taxation of this income in that jurisdiction. Allowing the request would in effect create double non taxation.

Finally, subsection 247(10) is a relief provision aimed at situations where a taxpayer wants to correct an improper allocation of income and expenses between entities in two jurisdictions. To the extent there is no taxation in the other jurisdiction or no double taxation, no relief should be granted under s. 247.

[14] In this case, since the Minister, in effect, stated that even if the appropriate transfer price was as proposed by MEGlobal, the downward transfer pricing adjustment would not be made, it is far from clear why it would first need to be determined what amount an arm's length person would have paid.

[15] There is no basis to interfere with the decision of the Tax Court. MEGlobal's appeal will, therefore, be dismissed with costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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DELIVERED FROM THE BENCH BY: WEBB J.A.

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