



The Supreme Court rules Loblaw Financial Holdings Inc. can benefit from a Canadian tax exception involving a bank it owns in Barbados.

This is a tax case involving Loblaw Financial Holdings Inc. (Loblaw Financial), a Canadian company. Loblaw Financial is owned by the Loblaw Group, which also owns grocery stores.

In 1992, Loblaw Financial opened a bank in Barbados called Glenhuron Bank Limited (Glenhuron). Glenhuron did corporate banking, meaning it managed the money of various companies.

Between 1992 and 2000, both the Loblaw Group and Loblaw Financial invested money in Glenhuron. In 2013, however, the Loblaw Group closed Glenhuron.

In its Canadian tax returns for the years 2001 to 2005, 2008, and 2010, Loblaw Financial did not include the money made by Glenhuron, claiming the revenue was exempt from the *Income Tax Act*. The law says Canadian companies must pay taxes on money made by their foreign affiliates, meaning companies they own abroad. That money is called “foreign accrual property income” (FAPI). However, a bank can get a tax exception if it was doing business mainly with companies that are not related to it. This is known as the “arm’s length requirement”.

The Minister of National Revenue of Canada denied the tax exception, so Loblaw Financial appealed to the Tax Court of Canada. At Tax Court, the Minister argued the exception did not apply and the Tax Court agreed.

Loblaw Financial appealed that decision to the Federal Court of Appeal, which sided with Loblaw Financial and said the exemption did in fact apply. The Minister then turned to the Supreme Court of Canada.

The Supreme Court has sided with Loblaw Financial: the tax exception did apply, so Loblaw Financial did not have to pay taxes on the money made by Glenhuron.

The arm’s length requirement was met.

Writing for the Supreme Court, Justice Côté explained “the FAPI regime is one of the most complicated statutory regimes in Canadian law”. But she said the question in this appeal is simple. Is a company “doing business” with a foreign affiliate when it manages and gives money to it? She said the answer is no. When the arm’s length requirement in the *Income Tax Act* is read in its grammatical and ordinary sense, it is clear money and management to an affiliate is not included in “doing business”.

Loblaw Financial managed and gave money to Glenhuron, but it was not doing business with it. Rather, as a corporate bank, Glenhuron was doing business with other companies not related to it. So, the arm’s length requirement was met. As a result, the tax exception applied, and Loblaw Financial did not have to pay taxes on the money made by Glenhuron for the years in question.

Breakdown of the decision: *Unanimous*: Justice [Côté](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Brown](#), [Martin](#) and [Kasirer](#) agreed)

More information (case # 39220): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [judgment](#) (Tax Court of Canada) | [appeal](#) (Federal Court of Appeal)
