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The case that defined the tax man's reach

Corporate Canada is hailing last week's decision as a major victory in a case that almost made tax law sexy, BEPPI CROSARIOL finds

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The Supreme Court of Canada can boast of many achievements in its hallowed 130-year history, but last week it did the impossible. It managed to stir up excitement over the subject of tax law.

In a decision being hailed as a major victory for Corporate Canada, the country's highest court effectively sanctioned the well-worn practice of tax avoidance, saying transactions structured to minimize what is owed to Caesar, as it were, don't per se constitute a breach of the law.

The closely watched decision was one of two rulings handed down last Wednesday that marked the high court's first test of the infamous general anti-avoidance rule, or GAAR. Enacted in 1988, the rule was intended as a catch-all to close loopholes in the Income Tax Act, forcing taxpayers to honour the spirit of the law, even in cases where no specific statute prevents them from structuring a sweeter deal.

"It's an extremely important case," said Alan Wheable, senior vice-president of taxation for **Toronto-Dominion Bank**, whose Canada Trustco Mortgage Co. subsidiary prevailed in the case after a bitter three-year battle with the federal government. "I think it's reassuring to both regular taxpayers and the government, because I think it indicates that the government can't do whatever it wants [even though] there are definite limits on taxpayers."

The case in question turned on a complex sale-leaseback transaction set up in 1996 by Canada Trustco with the help of two partners at Toronto-based law firm McMillan Binch Mendelsohn LLP, Vern Kakoschke and Michael Templeton. The mortgage lender purchased \$120-million worth of tractor trailers from a U.S. company, Transamerica