Docket: 2023-1111(IT)G

BETWEEN:

OWENS CORNING CANADA HOLDINGS ULC,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on February 26, 2026 at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	Mirandola Salvatore Kristen Duerhammer
Counsel for the Respondent:	Shubir Aikat Amanda De Bruyne Saagar Uppal

---

JUDGMENT

The Respondent's motion to quash the appeal pursuant to section 53(3)(a) of the *Tax Court of Canada Rules (General Procedure)* is granted.

The appeals of the Appellant's taxation years ended December 31, 2017 and 2018 are quashed.

Costs in the appeals are awarded to the Respondent.

Signed this 25th day of March 2026.

"David E. Graham"

Graham J.

Citation: 2026 TCC 60
Date: 20260325
Docket: 2023-1111(IT)G

BETWEEN:

OWENS CORNING CANADA HOLDINGS ULC,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] The Appellant seeks a downwards transfer pricing adjustment. The Respondent has brought a motion to quash the appeals on the grounds that the Court has no jurisdiction to order that relief. The motion is granted.

Background

[2] OC NL Invest Cooperatief UA ("Coop2") is a controlled foreign affiliate of the Appellant. Coop2 licenced certain intellectual property from a non-arm's length non-resident named Owens Corning Holdings 5 CV ("IP Holder"). It then sub-licenced that intellectual property to certain entities within the Owens Corning group and various third parties. In the process, Coop2 earned passive income.

[3] The agreement between Coop2 and IP Holder provided for the royalty to be calculated based on what an arm's length party would have paid, but no payments were actually made or accrued.

[4] When the Appellant filed its tax returns for the years in question, it calculated its foreign accrual property income from Coop2. In doing so, it deducted over $3,000,000 per year in royalty payments. The Minister of National Revenue reassessed the Appellant to deny the deductions. The Appellant has appealed.

No Jurisdiction Over Downward Transfer Pricing Adjustments

[5] The Appellant relies on the transfer pricing rules in subsection 247(2) of the *Income Tax Act* to calculate the deductions that it claims. Subsection 247(10) clearly states that a taxpayer can only obtain a downwards transfer pricing adjustment under subsection 247(2) if, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

[6] The Supreme Court of Canada's decision in *Dow Chemical Canada ULC v. The King*[1] and the Federal Court of Appeal's decision in *Meglobal Canada ULC v. The King* clearly establish that, because downward transfer pricing adjustments are a discretionary decision of the Minister, this Court does not have jurisdiction to order them.[2]

[7] The Appellant accepts that the Court lacks that jurisdiction. However, the Appellant asserts that it is not seeking a downward pricing adjustment, but rather simply looking to properly calculate its foreign accrual property income ("FAPI"). I see no merit in this attempted recharacterization.

Recharacterizing What Is Happening Does Not Bestow Jurisdiction

[8] Paragraph 95(2)(f) deems a foreign affiliate of a taxpayer to be resident in Canada for the purposes of, among other things, calculating its property income. The Appellant submits that, because Coop2 entered into a non-arm's length transaction with IP Holder, paragraph 95(2)(f) brings the transfer pricing provisions in subsection 247(2) into play. The Respondent does not appear to dispute this point.

[9] However, the Appellant goes on to argue that the phrase "except to the extent that the context otherwise requires" in paragraph 95(2)(f) precludes the application of subsection 247(10). The paragraph reads as follows:

> (f) except as otherwise provided in this Subdivision and except to the extent that the context otherwise requires, a foreign affiliate of a taxpayer is deemed to be at all times resident in Canada for the purposes of determining, in respect

---

1 2024 SCC 23.
2 2026 FCA 24.

> of the taxpayer for a taxation year of the foreign affiliate, each amount that is the foreign affiliate's
>
> > (i) capital gain, capital loss, taxable capital gain or allowable capital loss from a disposition of a property, or
> >
> > (ii) income or loss from a property, from a business other than an active business or from a non-qualifying business;
> >
> > [emphasis added]

[10] The Appellant says that deeming a foreign affiliate to be resident for all purposes of section 247 would be inappropriate and that, in certain circumstances, the context requires that various subsections not apply. For example, the Appellant argues that subsections 247(3) and (4) would inappropriately impose penalties and contemporaneous documentation requirements on a foreign affiliate.[3]

[11] The Appellant submits that it would be similarly inappropriate to require to non-residents (i.e. Coop2 and IP Holder) to obtain permission from the Minister to make adjustments to their incomes. I agree. But no one is asking Coop2 or IP Holder to obtain the Minister's permission. They are asking the Appellant, a Canadian resident, to do so as part of calculating its own income.

[12] The FAPI provisions do not tax the foreign affiliate. They tax the Canadian resident shareholder on the income of the foreign affiliate. They calculate that income as if the foreign affiliate were a resident, but they do so for the purpose of determining the shareholder's income, not for the purpose of imposing tax or any other obligations on the foreign affiliate.

[13] As part of computing its income, the Appellant had to compute its FAPI from Coop2. While that required the Appellant to compute Coop2's income, it did not require Coop2 to do anything. The obligation was on the Appellant.

[14] If, as part of calculating its income, the Appellant wanted to use subsection 247(2) to make a downwards transfer pricing adjustment to its FAPI, then

---

[3] The Appellant makes similar arguments about subsections 247(12), (13) and (14). I do not need to decide whether the context of subsections (3), (4), (12), (13) and (14) requires that a foreign affiliate not be deemed to be a resident for the purposes of those subsections and I decline to do so.

it was up to the Appellant, not Coop2, to apply to the Minister for permission to do so. The Appellant faced the exact same restrictions on downward transfer pricing adjustments that any Canadian resident faces when calculating their income.

The Lack of a Process Does Not Bestow Jurisdiction

[15] The Appellant also argues that, because there is no formal system in place to obtain the Minister's opinion under subsection 247(10) when FAPI is involved, that opinion is not required. I disagree for two reasons.

[16] First, because the Appellant views this as an obligation placed on the foreign affiliate, it is looking for a system whereby a foreign affiliate can apply to the Minister. However, as set out above, the obligation is on the Appellant, not Coop2.

[17] Second, and more importantly, the fact that the Minister has set out a mechanism for obtaining his permission in certain circumstances but not in others does not somehow allow the Court to fill in the vacuum by seizing jurisdiction.

Conclusion

[18] Based on all of the foregoing, the motion is granted. The appeals of the Appellant's taxation years ended December 31, 2017 and 2018 are quashed.

[19] The Appellant has not yet asked the Minister to exercise his discretion. If the Appellant eventually does so and the Minister refuses, the Appellant's recourse is to the Federal Court, not to this Court.

Costs

[20] Costs in the appeal are awarded to the Respondent.

Signed this 25th day of March 2026.

"David E. Graham"

Graham J.

CITATION:	2026 TCC 60
COURT FILE NO.:	2023-1111(IT)G
STYLE OF CAUSE:	OWENS CORNING CANADA HOLDINGS ULC v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 26, 2026
REASONS FOR JUDGMENT BY:	The Honourable Justice David E. Graham
DATE OF JUDGMENT:	March 25, 2026

APPEARANCES:

Counsel for the Appellant:	Mirandola Salvatore Kristen Duerhammer
Counsel for the Respondent:	Shubir Aikat Amanda De Bruyne Saagar Uppal

COUNSEL OF RECORD:

For the Appellant:

Name:	Mirandola Salvatore
Firm:	KPMG LAW LLP Toronto, Ontario

For the Respondent:	Marie-Josée Hogue Deputy Attorney General of Canada Ottawa, Canada