

Court File:

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**FEDERAL COURT OF APPEAL**

BETWEEN:

**HIS MAJESTY THE KING**

appellant

- and -

**HUTCHISON WHAMPOA LUXEMBOURG HOLDINGS S.À.R.L.**

respondent

**NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal, or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules*, instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN  
YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*Date:* \_\_\_\_\_ *Issued by:* \_\_\_\_\_  
*(Registry Officer)*

Federal Court of Appeal  
Thomas D'Arcy McGee Building  
90 Sparks Street  
Ottawa, Ontario  
K1A 0H9

**TO: Hutchison Whampoa Luxembourg Holdings S.à.r.l.**  
7 rue de Marché-aux-Herbes  
L-1728  
Luxembourg

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Honourable Justice Owen of the Tax Court of Canada (Tax Court) dated December 13, 2023 (Docket: 2017-3776(IT)G) by which the respondent's appeal from a notice of assessment dated August 1, 2016, made under the *Income Tax Act* (the *Act*) was allowed, with costs.

THE APPELLANT ASKS that:

1. this appeal be allowed, with costs before this Court and the court below;
2. that the judgment of the Tax Court be set aside; and
3. that the assessment under appeal be restored.

THE GROUNDS OF APPEAL are as follows:

1. the Tax Court, in considering whether the general anti-avoidance rule in s. 245 of the *Act* applied, erred in law in its conclusions with respect to the object, spirit and purpose of Article X of the *Canada-Barbados Tax Convention*, Article 10 of the *Canada-Luxembourg Tax Convention*, s. 10(6) of the *Income Tax Application Rules*, and the relevant provisions of the *Act*, including ss. 212(2), 215(1), and 215(6);
2. the Tax Court made reviewable errors in its conclusion that none of the provisions in issue were frustrated or abused within the meaning of s. 245 of the *Act* by the transactions at issue;
3. the Tax Court made reviewable errors in making evidentiary rulings in the course of the hearing; and
4. such further and other grounds as counsel may advise and this Honourable Court may allow.

January 10, 2024

**Attorney General of Canada**

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