AGF settles tax dispute stemming from period when Morneau was a company director

Minister of Finance Bill Morneau stands during question period in the House of Commons on Nov. 7, 2017. Mr. Morneau served as an independent board member at AGF Management Ltd. from 2000-14.

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BILL CURRY AND **CLARE O'HARA**
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Mutual-fund seller AGF Management Ltd. has settled a federal tax case over income shifted from Canada to an overseas subsidiary during a time when Finance Minister Bill Morneau was a company director.

The company has been battling with the Canada Revenue Agency for several years and recently disclosed that the CRA sought a total of $71.9-million in back taxes, interest and penalties related to the period spanning 2005-10. An agreement has since been reached, but the terms were not disclosed.

Mr. Morneau served as an independent board member at the company from 2000-14, prior to his election as an MP in 2015. Mr. Morneau is also the former executive chair of Morneau Shepell, a human-resources and pension-management firm.

AGF declined to comment on details of the case, stating that while the company has reached an agreement, "there are some uncertainties" to be worked out.

Despite strongly disagreeing with the CRA's position and filing objections to the amount of back taxes owed, AGF recently paid the CRA approximately $60-million in the case while it appealed.

In its latest quarterly report, AGF said the disagreement over taxes owed relates to transfer pricing with a foreign jurisdiction, meaning the CRA took issue with book-keeping transactions between AGF's Canadian and overseas operations, which are in Ireland and Singapore.

Mr. Morneau's press secretary, Chloé Luciani-Girouard, provided a statement that suggested the practice that was opposed by the CRA was put in place by AGF prior to when Mr. Morneau joined the board in 2000.

"It is his understanding that the arrangement that was ultimately challenged by the CRA pre-dates the minister's tenure on the board of directors and he ultimately resigned from the board over three years prior to the settlement," she said in an e-mail. She also said that Mr. Morneau sold all of his shares in AGF prior to the 2015 federal election.

Co-founded by Warren Goldring in 1957, AGF is one of the largest independent investment managers in the country with approximately $37-billion in total assets under management, as of October, 2017. Built off a strong family dynamic, the Goldrings continue to be a central aspect of the firm, with Blake Goldring serving as its current chief executive and Judy Goldring as chief operating officer.

More recently, the well-known mutual-fund provider has had to shift gears in the asset-management industry as regulators push for fee transparency when it comes to the cost of financial advice for Canadians. The changing landscape has seen a wave of mutual-fund companies entering the exchange-traded funds business over the past two years to capitalize on a new revenue stream, which AGF did this past January.

The issue of transfer pricing is part of the broader effort by the G20 and OECD countries to address what is called base erosion and profit shifting to ensure multinational companies are not moving profits around the world simply to avoid paying taxes. The global efforts are aimed at protecting the tax bases governments rely on to provide services.

As Finance Minister, Mr. Morneau is Canada's lead representative in these ongoing global negotiations.

The AGF agreement comes as Mr. Morneau and his government have been on the defensive on the tax front, accused by opposition parties of going after small-business owners, questioning employee discounts and tax breaks for Canadians with diabetes while not doing enough to ensure large corporations are paying their fair share.

The recent leak of tax haven records known as the Paradise Papers revealed that a senior Liberal fundraiser, Stephen Bronfman, had business connections with a trust in the Cayman Islands through his investment company, Claridge Inc. Prime Minister Justin Trudeau has said he is satisfied with Mr. Bronfman's assurances that all rules were followed.

Calgary-based accountant Kim Moody, who has been a vocal critic of Mr. Morneau's small-business tax changes, said the AGF case underscores the argument that the government would be better off targeting large public companies rather than individual taxpayers and small-business owners.

"As one person said at the Senate finance committee meetings, if you want to go duck hunting, go where the ducks are. And in this case, the small-business people, I don't think are very large ducks," he said.

Mr. Morneau's office said the minister has tackled tax evasion issues both domestically and internationally and that his private experience serving on corporate and charitable boards has helped him in his current role.

AGF disclosed that in 2013, it entered into a bilateral advance-pricing arrangement with the CRA and the "relevant tax authorities" to establish the appropriate transfer-pricing practices for the 2011-16 tax years. The company said the agreement provides certainty regarding taxation when operating in more than one country.

The AGF disclosures do not say whether the issues relate to its operations in Ireland or Singapore. Ireland's low corporate tax rates and investment rules attracted many multinationals in recent years, but that also came with added scrutiny.

Last month, the European Commission said it was taking Ireland to court in a multibillion-euro dispute alleging the country failed to collect enough tax from Apple Inc.

Dennis Howlett, who advocates for stronger tax enforcement of multinationals as the executive director of Canadians for Tax Fairness, said such overseas tax arrangements were once fairly common. However, companies are now weighing the potential tax benefits against the potential for negative public attention as tax enforcement has become a more high-profile policy issue.

"It has changed the risk calculation," he said. "We are seeing some deterrence effect from the amount of media attention on this. So companies are pulling back a little bit."

Patrick Samson, a spokesman for the Canada Revenue Agency, declined to comment on the agency's agreement with AGF, citing confidentiality provisions of the Income Tax Act.

"The CRA enters into advance pricing agreements after extensive review. By far transfer pricing is the most significant tax issue for CRA audits," he said in a statement.

"CRA encourages taxpayers to proactively avoid potential transfer pricing disputes by entering into advance-pricing arrangements. Advance-pricing agreements offer tax certainty and are endorsed under the Base Erosion and Profit Shifting Action Plan."

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