

A discordant jurisprudence: what does it mean to be ‘Acting in Concert’?

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Under the *Income Tax Act* (Canada) taxpayers are deemed to not deal at arm's length if they are "related". In all other circumstances, taxpayers will be dealing at non-arm's length (NAL) where they are factually NAL. In determining whether persons who are not related are dealing at arm's length, courts have generally held — and the Canada Revenue Agency agrees — that persons do not deal at arm's length in three circumstances:

- there is a common mind directing the bargain for both parties
- one party *de facto* controls the other; or
- the parties are acting in concert without separate interests.

Originally written for International Tax (Wolters Kluwer CCH), this article covers:

- The directing mind test
- *De Facto* control test
- Acting in concert without separate interests test
- Acting in concert without separate interests
- Acting at arm's length vs. an arm's length relationship
- Captive parties

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