Tax Topics

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Wolters Kluwer

# FOCUS ON CURRENT CASES

This is a regular monthly feature examining recent cases of special interest, coordinated by Tony Schweitzer of Dentons Canada LLP. The contributors to this feature are from Dentons Canada LLP, Montréal, Toronto, Calgary, Edmonton, and Vancouver.

## *DEML Investments Limited v. The King*, 2024 DTC 1029 (Tax Court of Canada) — Artificial capital loss was denied under the general anti-avoidance rule

### Background

DEML Investments Limited (the "Appellant") appealed the reassessments concerning its taxation years ended on November 30, 2010 and 2011.

The Appellant realized and reported a significant capital gain in 2007. A series of transactions were conducted to generate a capital loss that could be carried back and applied to offset the capital gain realized in 2007.

During the years under appeal, the Appellant was a wholly-owned subsidiary of Direct Energy Marketing Limited ("Direct Energy"). In 2008, Direct Energy made the decision to acquire certain resource properties (the "Resource Properties") from Transglobe Energy Corporation ("Transglobe"). Pre-acquisition transactions were implemented. Transglobe incorporated two corporations, 1377116 Alberta Ltd ("137") and 1389673 Alberta Ltd ("138"), which in turn formed a partnership ("DERP2"). Transglobe transferred 99% of the Resource Properties to 137 and the remaining 1% to 138 on a rollover basis under section 85 of the *Income Tax Act* (Canada) ("ITA"). 137 and 138 then transferred the Resource Properties to DERP2 on a rollover basis under subsection 97(2) of the ITA at costs of $1 for the Resource Properties qualifying as Canadian resource properties and $11.3 million for the Resource Properties qualifying as depreciable property. Direct Energy subsequently purchased the shares of 137 and 138 for $51,200,333. An amount of $50,688,330 of the purchase price was paid to acquire the shares of 137, resulting in Direct Energy's shares having an adjusted cost base of $50,688,330. Direct Energy transferred its shares of 137 to the Appellant on a rollover basis under section 85 of the ITA, resulting in the Appellant acquiring the shares of 137 at a cost of $50,688,330. On the following day, 137 distributed its holding in DERP2 (adjusted cost base of $11.3 million) to the Appellant. The Appellant then relied on the bump provision under paragraph 88(1)(*d*) of the ITA to claim an increase on the adjusted cost base of its holding in DERP2 to $50,688,330 to align with the fair market value of the underlying Resource Properties. DERP2 distributed the Resource Properties to the Appellant as a return of capital of $59,363,463, being the fair market value of the Resource Properties at that time. The Appellant's adjusted cost basis of its investment in DERP2 significantly decreased to ($8,675,032) On the day of DERP2's year end, DERP2 allocated its proceeds of distribution for the Resource Properties qualifying as Canadian resource properties to its partners, reducing the Appellant's cumulative oil and gas property expenses tax pool by $43,077,705 and increasing the Appellant's adjusted cost base in DERP2 by the same amount. The Appellant then transferred the assets acquired from DERP2 to another partnership ("LP1") in which it had a minority interest. LP1 transferred certain properties having a fair market value of $6.7 million to the Appellant which, in turn, transferred said property to DERP2, which increased the Appellant's adjusted cost base in DERP2 by nearly $6.7 million.

In light of the above, the Appellant possessed an investment in DERP2 with a low fair market value but a high adjusted cost base. The Appellant then sold its investment in DERP2 to Orion Oil & Gas Corporation, with which it dealt at arm's length, for $6.7 million. The Appellant reported a capital loss of $45,850,237 on this disposition, which it carried back and deducted in computing its 2007 taxable income (the "Capital Loss").

The Minister of National Revenue ("Minister") determined the Capital Loss to be nil. The Minister claimed the Capital Loss to be artificial and relied on the general anti-avoidance rule (the "GAAR") to deny it. The Appellant did admit that certain transactions were avoidance transactions and that claiming the Capital Loss was a tax benefit. The parties also accepted that the avoidance transactions were planned in order to allow the Appellant to obtain the tax benefit being the Capital Loss.

### Issue and Decision

The issue the Court had before it was determining whether any of the avoidance transactions circumvented, defeated, or frustrated the object, spirit, and purpose of the ITA.

Justice Russel relied on the *Triad Gestco Ltd. v. Canada*[1] case in which the Federal Court of Appeal highlighted the accepted textual, contextual, and purposive analysis applicable to capital loss provisions, which mentioned that: "offsetting a capital gain with the paper loss that was claimed results in an abuse and misuse of the relevant provisions, specifically paragraphs 38(*b*), 39(1)(*b*) and 40(1)(*b*)".[2]

The Court concluded that the Appellant was unable to demonstrate that the Capital Loss was a real loss. The Capital Loss occurred as a result of the "bump" and therefore does not reflect an actual loss as opposed to a paper loss. Therefore, the Court held that the Capital Loss claimed by the Appellant was an artificial loss, that the object, spirit, and purpose of the applicable provisions were not respected, and that there was an abuse of paragraphs 3(*b*), 38(*b*), 39(1)(*b*), 40(1)(*b*), and 111(1)(*b*) of the ITA, as well as an abuse of the definition of "adjusted cost base" in section 54 of the ITA and of the definition of "net capital loss" in subsection 111(8) of the ITA.

The Court also concluded that the tool allowing the tax benefit was the "bump" and therefore, the applicable provisions to achieve the "bump" were abused.

It is to be noted that the judge stated that rulings and opinions provided by the CRA are "of little assistance" in GAAR cases and that the courts are not bound by the opinion of the Minister or of the CRA. The Court also stated that determining the object, spirit, and purpose of a provision is a question of law and is the sole responsibility of the courts.

*— Emmanuel Sala, Partner & Shereen Cook, Associate*

## *3295940 Canada Inc. v. The King*, 2024 DTC 5049 (Federal Court of Appeal) — Cross-redemption of capital dividends was found not to be abusive considering the entire series of transactions

### Background[1]

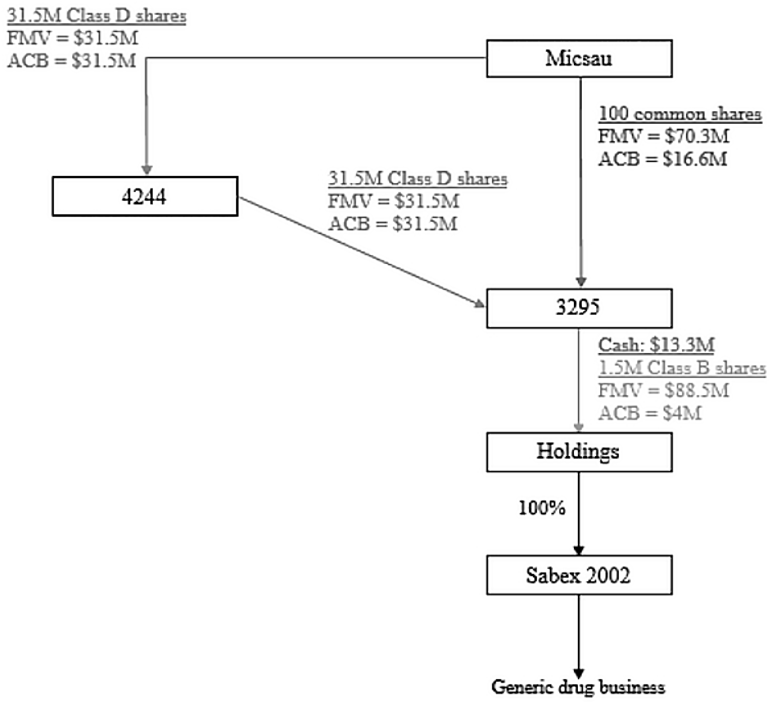
Gestion Micsau Inc. ("Micsau"), which held an indirect minority stake ($88.5 million) in a generic drug business (the "Target") via its wholly-owned subsidiary 3295940 Canada Inc. ("3295"), had to sell its investment when the majority owner of the Target undertook proceedings to sell its stake in the Target. Micsau had a high adjusted cost base ("ACB") in its shares in 3295 held both directly and indirectly ($48.1 million), while 3295's ACB in the Target was lower ($4 million). The fair market value ("FMV") of Micsau's investment in 3295 was $101.8 million. Micsau wished to sell its shares in 3295 to minimize its capital gain, but the buyer, Novartis Pharmaceuticals Canada Inc. (the "Buyer"), did not agree to acquire the shares of 3295.

[1] *Triad Gestco Ltd. v. Canada*, 2012 DTC 5156 (FCA).

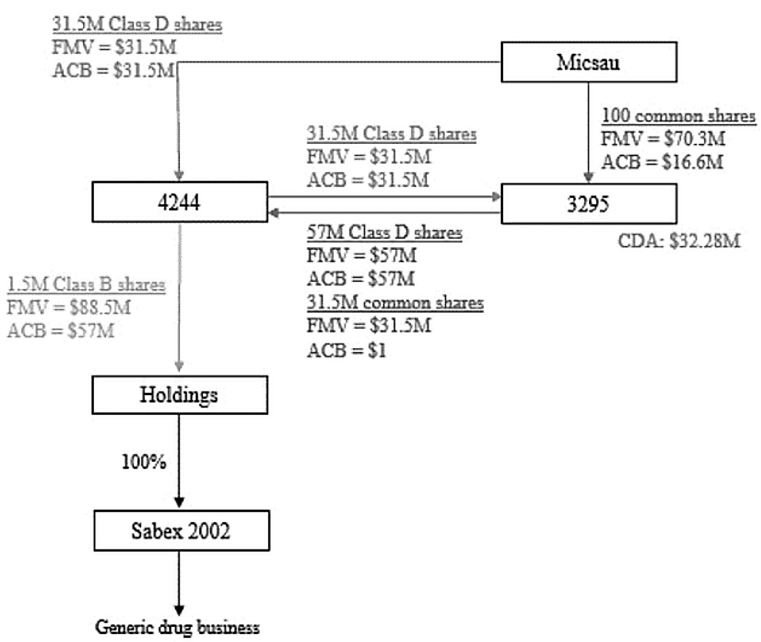
[2] *Triad Gestco Ltd. v. Canada*, 2012 DTC 5156 (FCA), paragraph 50.

[1] All charts are integrally copied from the decisions rendered by the Federal Court of Appeal.

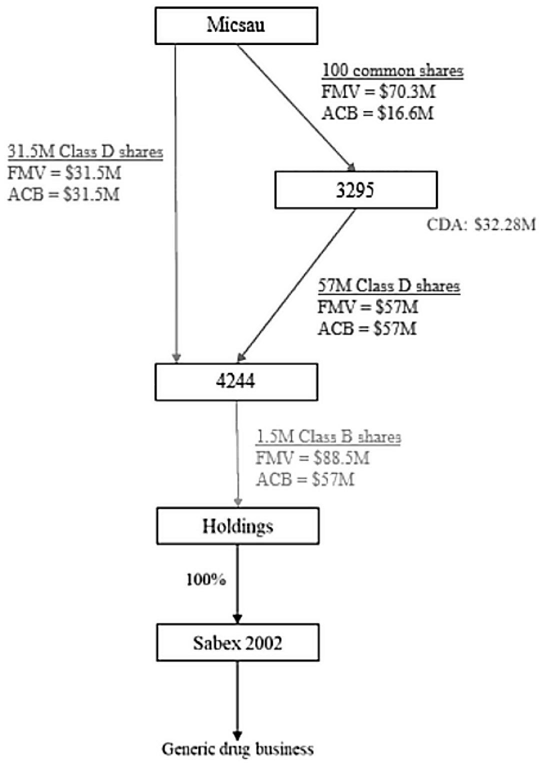
Certain transactions were implemented in order for Micsau to make use of its high ACB in its shares of 3295; ultimately, the Buyer would purchase shares of a new corporation for $88.5 million. The Buyer agreed to the proposal in exchange for a $1.5 million reduction of the purchase price. Micsau exchanged its shares in 3295 for 31.5 million class D preferred shares (FMV: $31.1 million/ACB: $31.1 million) (the "3295 Class D Shares") and 100 common shares (FMV: $70.5 million/ACB: $16.6 million). Micsau then transferred its 3295 Class D Shares to 4244851 Canada Inc. ("4244"), a newly incorporated corporation (the "4244 Class D Shares").



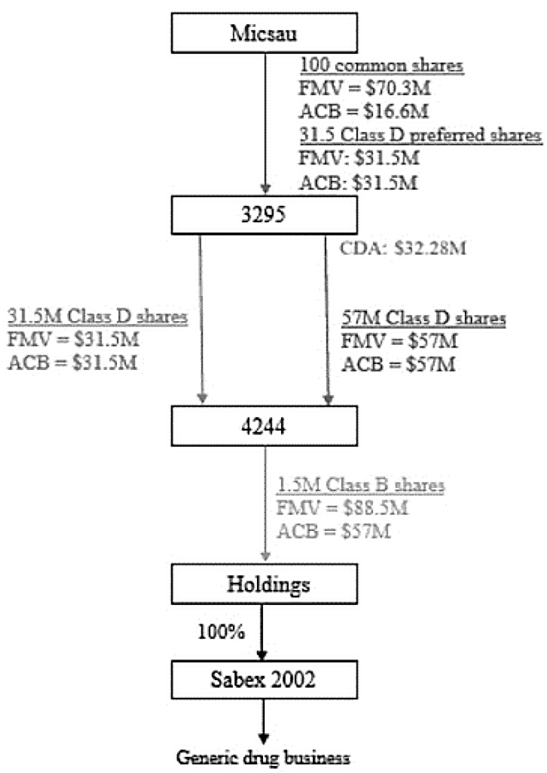

Then, 3295 transferred its shares in the Target to 4244 and was issued, as consideration, 57 million Class D shares worth $57 million and 31.5 million common shares worth $31.5 million. 3295 elected to recognize $57 million as proceeds of disposition, which resulted in a capital gain of $53 million, being approximately equal to the gain Micsau would have otherwise paid had it disposed of its initial shares in 3295. As a result of this transaction, 3295 found itself with 57 million Class D shares with an ACB of $57 million, and 31.5 million common shares with no ACB in 4422. This transaction increased 3295's capital dividend account which totaled $32.28 million following the transaction.



Cross-redemptions occurred to eliminate the cross-ownership. In both cases, the consideration for the redemption was a promissory note. The deemed dividend resulting from each redemption was treated as a capital dividend. 3295 and 4244 offset the promissory notes.




Micsau transferred its shares in 4244 to 3295:




3295 sold all of its 4244 shares to the Buyer for $88.5 million.

3295 was reassessed by the Minister of National Revenue (the "Minister") under the general anti-avoidance rule ("GAAR") (section 245 of the *Income Tax Act* (Canada) ("ITA")) as it received a reduction in the capital gain of $31.5 million compared to the scenario where it would have directly sold its shares of the Target to the Buyer.

### Issues and Tax Court Decision

The Tax Court of Canada ("TCC") ruled that GAAR applied to the series of transactions, dismissed the appeal, and confirmed the assessment. Since 3295 had conceded two of the three elements of the GAAR, namely the existence of a tax benefit and avoidance, the only issue remaining was whether the series of transactions was abusive. The TCC concluded that the series of transactions indeed abused subsection 55(2) of the ITA as well as the scheme governing capital dividends, which is to prevent the usage of capital dividends to avoid the capital gain attributable to an unrealized appreciation of the shares of a corporation.

### Federal Court of Appeal Decision

The only issue before the Federal Court of Appeal ("FCA") was whether the series of transactions was abusive. The FCA found that the TCC's failure to consider the overall result of a series of transactions was an error of law, which led the Court to misconstrue the abuse analysis and improperly reject alternative transactions that would have confirmed that the series did not abuse subsection 55(2) or the scheme governing capital dividends.

The FCA found that rather than considering the entire series of transactions and its overall result, the judge only considered the moment when 3295 reduced its potential capital gain through the cross-redemption and capital dividend. Had it considered the entire series of transactions, it would have noted that in the course of the series, a $53 million capital gain was realized and taxed, being nearly the same amount of gain that would have been realized had Miscau directly sold its shares of 3295.

The FCA noted that the Minister took the position that the cross-redemption and capital dividend achieved a decrease of 3295's capital gain by $31.5 million. The FCA stated that the $31.5 million reduction did not stem from the cross-redemption, but from the fact that Micsau sold the first lot of shares.

The FCA also pointed out the relevance of considering alternative transactions in determining whether tax avoidance is abusive and, more precisely, in ascertaining the object, spirit, and purpose of the relevant provisions. According to the FCA, the TCC erred in concluding that the other alternative transactions initially submitted by 3295 were not valid comparisons because they related to the sale of the 3295 shares which was not accepted by the Buyer. In the FCA's opinion, the alternative transactions submitted by 3295 ought to have been considered by the TCC, because they

(1) were available under the ITA,

(2) were not so remote as to be practically infeasible,

(3) had a high degree of economic similarity to the series at issue,

(4) generated tax consequences approximately as favourable as the series of transactions at issue, and

(5) would not have triggered the application of the GAAR.

### Conclusion

The FCA allowed the appeal. The FCA's ruling highlights the importance of considering the entirety of a series of transactions and its overall result when assessing potential tax abuse. The FCA determined that the TCC's failure to evaluate the overall result of the transactions led to a misinterpretation of the abuse analysis required when applying the GAAR. Had the Tax Court properly considered the entire series of transactions and its overall result, it would have found no abuse of subsection 55(2) of the ITA. Additionally, the FCA emphasized the importance of examining alternative transactions in determining abusive tax avoidance.

— *Emmanuel Sala, Partner & Anass Benchekroun, Associate*

## *Potash Corporation of Saskatchewan Inc. v. Canada*, 2024 DTC 5040 (Federal Court of Appeal) — Denial of the deduction of the taxpayer's base payments made under *Mineral Taxation Act*

On February 27, 2024, the Federal Court of Appeal (the "FCA") dismissed Potash Corporation of Saskatchewan Inc.'s ("PCS") appeal of a Tax Court's decision (2022 DTC 1064), in which the Tax Court found that PCS was not entitled to deduct certain base payments made to the Province of Saskatchewan under the *Mineral Taxation Act* (Consolidated Statutes of Saskatchewan 1983-84, c M-17.1) (the "MTA") and the *Potash Production Tax Schedule* to the MTA (the "PPTS") in computing its income for 1999 to 2002, the taxation years under appeal (the "Taxation Years").

## Background

PCS had potash mining operations in the Province of Saskatchewan and, during the Taxation Years, paid a total of approximately $59 million as base payments to the Province of Saskatchewan.

The base payment for a taxation year was calculated by multiplying the rate of tax determined in accordance with the PPTS with the number of tonnes of potash sold or otherwise disposed of in that year, minus certain permitted deductions. The rate of tax was determined by dividing a prescribed percentage of the taxpayer's profits for the year by the tonnes of potash sold or otherwise disposed of in that year.

PCS sought to deduct the base payments in computing its income for the Taxation Years. The Minister reassessed the Taxation Years, denying the deductions. PCS appealed the reassessments.

## Issue and Tax Court Decision

The issue before the Tax Court was whether the base payments were deductible when computing the income of PCS for the Taxation Years.

The Tax Court agreed with the Crown that the base payments were taxes on income in respect of which a deduction was prohibited by paragraph 18(1)(*a*) of the *Income Tax Act* (the "ITA"). It found that the base payments were not incurred by PCS for the purpose of gaining or producing income from its potash mining business, but were rather a tax that was applied only after the conclusion of the process of earning income from that business.

In addition, even if paragraph 18(1)(*a*) of the ITA did not prevent the deduction of the base payments, the Tax Court agreed with the Crown that paragraph 18(1)(*m*) of the ITA, as it read during the Taxation Years (and which was repealed in 2003 effective for taxation years that began after 2007), would have applied, as the provision essentially denied deductibility of a tax that could "reasonably be regarded as being in relation to mineral production". In the Tax Court's view, the "sale or other disposition of" potash, on which the base payment tax focused, is an activity that "related" to the production of that potash.

## Federal Court of Appeal Decision

Applying the standard of review of correctness, the FCA sought to determine whether paragraph 18(1)(*a*) of the ITA prohibited the deduction of the base payments made by PCS. The FCA concluded that paragraph 18(1)(*a*) applied to deny the deduction, and therefore there was no need to consider whether paragraph 18(1)(*m*) would also have denied such deduction.

In its analysis of paragraph 18(1)(*a*) of the ITA, the FCA examined the formula used to calculate the base payment and noted that PCS only produced potash for sale. The base payment was calculated based on the quantity of potash that was sold, and therefore the base payment was only incurred by PCS as a result of a sale of potash by PCS, which led to income being gained. If PCS did not sell any potash, then no base payment would be incurred.

PCS argued that it could not carry on business if it did not pay the base payment. The FCA noted that PCS' argument was based on the consequences of not paying the base payment, and not on whether the base payment was incurred for the purpose of gaining or producing income. In the view of the FCA, the same argument concerning the consequences of failing to pay the base payment could also be made with respect to provincial income taxes and noted that it is well established that provincial income taxes are not deductible in computing income for the purposes of the ITA. The argument that failing to pay a tax could result in the loss of a business is not sufficient, in and of itself, to establish that the base payment was incurred for the purpose of gaining or producing income.

In response to PCS' argument which focused on the obligation to pay the base payment even if PCS did not realize a profit, the FCA noted that PCS appeared to equate "income" with "profit" for the purposes of paragraph 18(1)(*a*) of the ITA. However, paragraph 18(1)(*a*) of the ITA refers to "income" and the word "profit" does not appear in this paragraph. Citing *Ludco Enterprises Ltd. v. Canada*, 2001 DTC 5505 (SCC), and *Novopharm Ltd. v. Canada*, 2003 DTC 5195 (FCA), the FCA concluded that the word "income", for the purposes of paragraph 18(1)(*a*) of the ITA, does not mean "profit" or "net income", but rather an amount that would be included in computing income for the purposes of the ITA. For PCS, the base payment was an expenditure that would not have been incurred unless it sold potash, which produced income. The base payment was therefore not an expenditure incurred in order to earn income.

## Conclusion

The FCA found no error in the Tax Court's decision and dismissed the appeal. PCS gained or produced income by selling potash and the base payments were imposed based on the quantity of potash sold by PCS in a particular year. Therefore, the base payments were not made or incurred *for the purpose of* gaining or producing income but rather *as a result* of PCS gaining or producing income by selling potash. In upholding the Tax Court's decision, the FCA highlights the distinction between expenses incurred to earn income, which are deductible, and expenses incurred as a consequence of earning income, which are not.

— *Emmanuel Sala, Partner & Victor Qian, Associate*

## *Mattina v. Canada (National Revenue)*, 2024 DTC 5050 (Federal Court) — Dismissal of an interim stay motion

### Background

In October and December 2021, Adam Raffaele Mattina (the "Applicant") filed notices of objection ("Objections") with regard to reassessments ("Reassessments") issued to him by the Canada Revenue Agency ("CRA") pursuant to section 165 of the *Income Tax Act* (Canada) ("ITA"). In November 2022, the Objections were assigned to an appeals officer with whom the Applicant subsequently exchanged information pertaining to the Objections. The Applicant claimed that a meeting held in September 2023 between the appeals officer and himself ended positively and that he was informed that "a revised recommendation letter would be forthcoming".

However, in October 2023, the Applicant was informed that the appeals division of the CRA had referred the Objections to the audit division on account of the new information obtained by the CRA during the objections process (the "Referral"). The Applicant requested that the Federal Court (Trial Division) ("FC") stay the Referral of his Objections until the determination of the underlying application for judicial review or until the determination of a stay motion.

### Issues and Decision

The only issue before the FC was whether the Applicant's interim stay application should be allowed.

The Applicant claimed that the Referral was made instead of vacating, confirming, or varying the Reassessments.

The FC stated that the test applicable to the granting of a stay is the conjunctive three-part test of *Toth v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No. 587 (FCA). Pursuant to this test, the Applicant had to demonstrate a serious issue raised by the underlying application for judicial review, irreparable harm, and the balance of convenience favouring granting the stay.

First, the FC agreed with the Minister's position that no serious issue was to be tried as the Applicant's right to appeal the Reassessments before the Tax Court pursuant to paragraph 169(1)(*b*) of the ITA precluded him from seeking judicial review. Moreover, the FC found that the Minister's default in not reconsidering the Reassessments diligently is not a valid justification to invalidate them.

The FC also observed that the evidence put forward in this case seemed to demonstrate that while the appeals division could indeed legitimately exercise the Minister's powers under subsection 165(3) of the ITA, the audit division could only make a recommendation to the appeals division.

The FC finally noted that the Applicant failed to demonstrate that the Minister had exercised her powers non-judiciously or in bad faith, despite the fact that the process lasted almost three years. The FC was of the view that procedural defects by the Minister are not themselves grounds for setting aside an assessment.

Second, the FC stated that the Applicant failed to present clear and non-speculative evidence in order to establish irreparable harm.

According to the FC, the eventual harm caused by the Referral was reparable, considering the recommendation of the audit division would not be binding on the appeals division. Furthermore, the eventual harm was unclear and speculative, as any potential harm depended on the occurrence of several contingencies:

(1) the audit division making an unfavourable recommendation;

(2) the Applicant being unable to challenge that recommendation;

(3) the appeals division following the recommendation; and

(4) the Applicant having to appeal the Reassessments before the Tax Court.

Third, the FC concluded that, though the findings on the seriousness factor and irreparable harm factor were sufficient to dispose of the question relating to the balance of convenience, the balance of convenience in the present case was in favour of the Minister, not in favour of the Applicant. According to the FC, the public interest of having the CRA enforce the ITA eclipsed any potential harm put forward by the Applicant.

### Conclusion

The FC ruled that the Applicant had not met the three-part test required for a stay and dismissed the motion with no award of costs.

— *Emmanuel Sala, Partner & Anass Benchekroun, Associate*

# CURRENT ITEMS OF INTEREST

## NEW — Bare Trusts Are Exempt From Trust Reporting Requirements for 2023

In recognition that the new reporting requirements for bare trusts have had an unintended impact on Canadians, the CRA will not require bare trusts to file a T3 Income Tax and Information Return (T3 return), including Schedule 15 (Beneficial Ownership Information of a Trust), for the 2023 tax year, unless the CRA makes a direct request for these filings. Over the coming months, the CRA will work with the Department of Finance to further clarify its guidance on this filing requirement and will communicate with Canadians as further information becomes available.

## Government Extending Support for Mineral Exploration in Canada

Chrystia Freeland, Deputy Prime Minister and Minister of Finance, announced that the federal government will extend the 15% Mineral Exploration Tax Credit for investors in flow-through shares for an additional year, until March 31, 2025. The credit was scheduled to expire on March 31, 2024.

## EFILE for Non-Residents

Effective for the 2023 tax year, electronic filers will be able to submit T1 income tax and benefit returns through EFILE for the following individuals, subject to some exclusions:

- Emigrants; and
- Non-residents who are disposing of a taxable Canadian property, filing under section 116 of the *Income Tax Act*.

## Electronic Submission of Form T2201, Disability Tax Credit Certificate

The fully digital disability tax credit ("DTC") application form is available to applicants and their legal representatives. Applicants can complete Part A of the form online via My Account. To simplify the process and save time, the applicant's portion of the form is pre-populated with information already on file at the CRA. Once completed, the applicant will receive a reference number to give to their medical practitioner who will use it to complete Part B of the form online.

The traditional paper form will continue to be available to those who are unable or prefer not to complete the application online. Paper copies of Form T2201, Disability Tax Credit Certificate, can be sent by mail to the Sudbury, Winnipeg, or Jonquière tax centre, or submitted electronically using the secure Submit Documents tool in the My Account or Represent a Client portal.

A legal representative, or a representative with level 2 authorization, can upload and submit Form T2201 at any time during the year by:

- At the bottom of the "Submit Documents" webpage in the CRA portal, clicking the "without a case or reference number" hyperlink.
- Selecting the button "Send Form T2201 — Disability Tax Credit application, or send supporting documents".
- Following the steps to attach the file(s).

## New Option in ReFILE for EFILE Service Providers

Starting with the 2023 tax year, EFILE service providers can now use ReFILE to request changes for returning residents to Canada and immigrants. NETFILE users cannot use this option.

## Recent Publications

The following publications were recently released/updated:

- Farming Income and the AgriStability and AgriInvest Programs Guide 2023 (www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4060/rc4060-23e.pdf);
- Individual Tax Statistics by Forward Sortation Area (FSA) — 2023 Edition (2021 tax year) (www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/income-statistics-gst-hst-statistics/individual-tax-statistics-fsa/individual-tax-statistics-fsa-2023-edition-2021-tax-year.html);
- P105 Students and Income Tax 2023 (www.canada.ca/content/dam/cra-arc/formspubs/pub/p105/p105-23e.pdf);
- RC4215 Canada Carbon Rebate (www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4215/rc4215-24e.pdf); and
- New reporting requirements for trusts: T3 returns filed for tax years ending after December 30, 2023 (www.canada.ca/en/revenue-agency/services/tax/trust-administrators/t3-return/new-trust-reporting-requirements-t3-filed-tax-years-ending-december-2023.html).

## Ontario Budget 2024: *Building a Better Ontario*

On March 26, 2024, Ontario's Finance Minister, Peter Bethlenfalvy, tabled the province's 2024–2025 budget, *Building a Better Ontario* ("Budget 2024"). Tax and related measures announced in Budget 2024, including simplifying the Computer Animation and Special Effects Tax Credit and extending the temporary gas tax and fuel tax rate cuts, are discussed below.

### Corporate Measures

#### Simplifying the Ontario Computer Animation and Special Effects Tax Credit

The Ontario Computer Animation and Special Effects ("OCASE") Tax Credit is an 18% refundable corporate income tax credit available to companies that undertake computer animation and special effects activities on eligible film and television productions in Ontario. To be eligible for the OCASE Tax Credit, a film or television production must also be certified for either the Ontario Film and Television Tax Credit or the Ontario Production Services Tax Credit, "tethering" the OCASE Tax Credit to these other film and television tax credits.

The government is proposing to remove this tethering requirement and replace it with the following new eligibility rules to ensure the credit continues to only support professional productions:

- A qualifying corporation will be required to incur a minimum of $25,000 in Ontario labour expenditures for each film or television production for which the OCASE Tax Credit is claimed. The minimum labour expenditure threshold would be required to be incurred in the taxation year of the claim or cumulatively between the taxation year of the claim and the previous taxation year. Once a qualifying corporation incurs the minimum labour expenditure threshold within up to two taxation years for a specific production, expenditures related to that production in those taxation years and any subsequent taxation years would be eligible.
- Certain types of productions will be excluded from eligibility, including but not limited to instructional videos, music videos, and gaming videos.

The new rules would be effective for productions for which the qualifying corporation commences computer animation and/or special effects work on or after March 26, 2024.

#### Ontario Film and Television Tax Credit

Going forward, the government will review the Ontario Film and Television Tax Credit regional bonus to ensure it effectively supports film and television production across the province.

***For additional information about Budget 2024, please see the Ontario Budget Dispatch.***

## Manitoba Budget 2024: *One Future. One People. One Manitoba.*

Manitoba's 2024 budget — *One Future. One People. One Manitoba.* ("Budget 2024") — was presented on April 2, 2024 by Finance Minister Adrien Sala. It projects a deficit of $796 million for 2024–25. Budget 2024 announced several tax changes, which are summarized below.

## Income Tax

### Basic Personal Amount

Beginning in 2025, Manitoba's basic personal amount will be income tested. It will be reduced for taxpayers with a net income over $200,000.

### Fertility Treatment Tax Credit

For the 2024 taxation year, the maximum annual expenditures eligible for the fertility treatment tax credit will double from $20,000 to $40,000, which will increase the tax credit amount from $8,000 to $16,000. In addition, for the 2024 taxation year, eligible expenses under the credit will be expanded to parallel federal changes to medical expense reimbursement.

### Renters Tax Credit

For the 2025 taxation year, the maximum renters tax credit will increase from $525 to $575, and the senior's top-up will increase from $300 to $328. Both amounts will be increased in each year of the government's current mandate. Amendments will also be introduced to clarify that mobile homeowners are not eligible for the credit.

### Rental Housing Construction Tax Credit

A new rental housing construction tax credit will be introduced, effective for the 2024 taxation year. It will provide $8,500 for the construction of new market-rate rental units and $13,500 for units classified and maintained as affordable units for a period of least 10 years. Construction must commence on or after January 1, 2024. The credit will be fully refundable to non-profit organizations. For other businesses, $8,500 will be fully refundable on all units, with an additional $5,000 non-refundable credit available over 10 years for affordable units.

### Interactive Digital Media Tax Credit

A sub-category of qualifying corporations will be established for Manitoba video game companies. Qualifying corporations in the new sub-category will be exempt from having to apply for a certificate of eligibility (pre-approval) prior to project work commencement. Amendments will also be introduced to clarify that expenses incurred in relation to eligible projects must be claimed in the taxation year in which those costs were incurred.

### Cultural Industries Printing Tax Credit

The cultural industries printing tax credit, which was scheduled to expire on December 31, 2024, will be extended for one year to December 31, 2025.

### Data Processing Investment Tax Credits

The data processing investment tax credits will be eliminated for 2025 and subsequent taxation years.

## Tax Administration

Budget 2024 announced the following tax administration measures.

- A recovery tax will be established for qualified disability trusts, to retroactively negate the preferential treatment in the case of trust funds not going to the intended qualified beneficiary.
- The tax audit periods for provincially administered taxes will be codified to a maximum of six years from date of notification. However, the six-year statutory limitation period will not apply when taxes have been collected but not remitted or where a person made a misrepresentation attributable to neglect, carelessness, or wilful default. A notice of assessment will also be required to be issued at the completion of all tax audits.
- Effective May 1, 2024, the $50 tax clearance certificate fee will be eliminated.
- The advance ruling fee will also be eliminated as of May 1, 2024 for provincially administered tax statutes.

***For additional information about Budget 2024, please see the Manitoba Budget Dispatch.***

# INTERNATIONAL NEWS

## UK Legislates for Social Security Tax Cuts

The UK has enacted the *National Insurance Contributions (Reduction in Rates) Act 2024*, to give effect to tax cuts announced in the 2024 Spring Budget.

## IMF Considers Pillar Two Responses for Low-Tax States

The International Monetary Fund has released a new Working Paper that looks at the options available to low- or no-tax jurisdictions in light of the global introduction of a 15% minimum corporate tax rate on large multinational enterprises.

The working paper discusses the potential adoption by territories of new profit tax regimes, as well as domestic minimum top-up taxes, to broaden their tax bases and guarantee that taxes that would otherwise be collected overseas instead contribute to domestic coffers.

The report suggests that the design of the Pillar Two framework makes "familiar alternatives" to profit taxes — of economic rent taxes — ineffective, stating:

> In practice, given the specifics of the rules, an efficient rent tax on in-scope multinationals cannot be combined with a statutory tax rate below a certain cutoff, because the minimum tax becomes always binding.

The report notes that territories should instead look to combine profit taxes with appropriate tax incentives, noting that "Under the GloBE, immediate expensing particularly maintains the time-value of fully deducting the cost of investment, without impacting the GloBE effective tax rate."

## US IRS Launches Dirty Dozen Campaign

On March 28, 2024, the US Internal Revenue Service ("IRS") kickstarted its annual Dirty Dozen campaign. The initiative is intended to warn taxpayers of prevalent and evolving scams intended to purloin taxpayers' personal data. Taxpayers typically are duped into either clicking a deceptive link, into filling out their personal and financial information, or into downloading malware onto their electronic device.

Started in 2002, the IRS's annual Dirty Dozen campaign lists 12 scams and schemes that put taxpayers, businesses, and the tax professional community at risk of losing money, personal information, data, and more. Over the last nine years, the agency has delivered the campaign under the umbrella of the Security Summit, with support from state tax agencies and tax professionals nationwide.

The agency said:

> Taxpayers and tax professionals should be alert to fake communications posing as legitimate organizations in the tax and financial community, including the IRS and state tax agencies. These messages arrive in the form of unsolicited texts or emails to lure unsuspecting victims to provide valuable personal and financial information that can lead to identity theft.

It also recommended that taxpayers set up two-factor or multi-factor authentication on their emails, to ensure their email accounts remain secure even if their password is compromised. In particular, it said taxpayers should not open emailed attachments purported to be from the agency or click links enclosed in these emails.

"The IRS initiates most contacts through regular mail and will never initiate contact with taxpayers by email, text or social media regarding a bill or tax refund," the agency said.

## OECD Releases Update on Tackling Tax Treaty Abuse

The OECD has said countries are continuing to make steady progress on the implementation of the Action 6 BEPS minimum standard, on tackling tax treaty shopping and other forms of treaty abuse.

The sixth peer review report on the implementation of the Action 6 minimum standard on treaty shopping, which includes data on tax treaties concluded by jurisdictions that were members of the Inclusive Framework on May 31, 2023, reveals that most agreements concluded between the members of the Inclusive Framework are either already compliant with the Action 6 minimum standard or will shortly come into compliance.

The report (also available in French) confirms the importance of the BEPS Multilateral Instrument ("BEPS MLI") as the tool used by the vast majority of jurisdictions in the implementation of the BEPS Action 6 minimum standard.

The OECD said:

> The BEPS MLI has continued to significantly expand the implementation of the minimum standard for the jurisdictions that have ratified it. The impact and coverage of the BEPS MLI continue to increase as additional jurisdictions sign and ratify it. To date, the BEPS MLI covers 102 jurisdictions and around 1,900 bilateral tax treaties.

As one of the four minimum standards, BEPS Action 6 identified treaty abuse, and in particular treaty shopping, as one of the principal sources of BEPS concerns. Treaty shopping typically involves the attempt by an entity to access indirectly the benefits of a tax agreement between two jurisdictions without being a resident of one of those jurisdictions. To address this issue, all members of the Inclusive Framework have committed to implementing the Action 6 minimum standard and participate in a periodic peer review process to monitor its accurate implementation.

## UK Air Passenger Duty Increased on April 1

On April 1, the UK and the Isle of Man increased the rates of tax that apply to air travel under the Air Passenger Duty regime. From April 1, the Band B (long-haul) and Band C (ultra-long-haul) reduced rates were increased by £1, to £88 and £92 respectively, while the Band B and C standard rates were hiked by £3 and £2, respectively, to £194 and £202.

The reduced rate applies to the lowest class of travel available on the flight, and the standard rate applies to any other class. The rates of duty for flights to Band A journeys that are up to 2,000 miles are unchanged.

**TAX TOPICS**

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