Tax Topics

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FOCUS ON CURRENT CASES

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

C.W. CARRY LTD. V. CANADA (ATTORNEY GENERAL), 2024 DTC 5182 (FEDERAL COURT)—FEDERAL COURT FINDS THAT CRA DENIAL OF AN EXTENSION WAS AN UNREASONABLE EXERCISE OF DISCRETION, EVEN WHERE THE APPLICANT MADE A MISTAKE IN THE ORIGINAL APPLICATION

Background

C.W. Carry Ltd. (the "Applicant") received financial support during the COVID-19 pandemic through the federal Canada Emergency Wage Subsidy ("CEWS") program. The program provided supplemental funding for an employer's payroll if the employer could establish that its gross revenue during pandemic months fell by a certain percentage relative to the equivalent month the year prior to the pandemic (the "General Method"), or relative to the average gross revenues received in January and February 2020 (the "Alternative Method").

A Canada Revenue Agency ("CRA") audit of the Applicant's benefits received for its first qualifying period (from April 12 to May 9, 2020, or "Q2") revealed that, due to a transcription error made by a former employee, the Applicant elected to use the Alternative Method and received an overpayment of CEWS benefits of approximately $1 million. However, had the former employee not made the transcription error, the Applicant would have used the General Method to determine its CEWS benefits which would have resulted in an overpayment of only approximately $60,000.

Under subsection 125.7(10) of the *Income Tax Act* (Canada) ("ITA"), an entity eligible for the CEWS may amend or revoke an election made under the CEWS provisions (e.g., to use the Alternative Method) on or before the application due date for the first qualifying period in respect of which the election is made. In the Applicant's case, that due date for Q2 had long passed. The CRA policies concerning late-filed amended applications also did not allow re-elections of calculation methods after the due date. However, subsection 125.7(16) of the ITA provides that for the purposes of determining whether an eligible entity is a qualifying entity for a qualifying period (and accordingly entitled to the CEWS), the Minister of National Revenue (the "Minister") may, at any time, extend the time for filing an application for the CEWS.

The Applicant invoked a combination of subsections 125.7(10) and (16) of the ITA to seek an extension of time for filing an application and revoking the election of the Alternative Method in favour of the General Method. The CRA refused the Applicant's request for the following reasons:

- Subsection 125.7(16) could not be used to extend the time for filing to determine whether the Applicant could be a qualifying entity for Q2 because, based on the Applicant's revenue, it could not possibly become a qualifying entity;
- While subsection 125.7(16) provides the CRA with discretionary authority to accept late-filed section 125.7 applications, the due date for the claim period does not change and the CEWS claim is just accepted after the due date; and
- The Applicant had not revoked its election to use the Alternative Method on time, and the error was not caused by the CRA. The onus was on the Applicant to submit accurate original applications on time.

Issues and Decision

The Applicant sought judicial review of the CRA's decision, and the sole issue was whether the decision was reasonable pursuant to guidance from the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("*Vavilov*").

The Federal Court (the "Court") found the CRA's decision was unreasonable. First, the Court found that rather than granting the extension for the purposes of determining whether the Applicant was a qualifying entity, the CRA made a determination that the Applicant could not possibly be a qualifying entity for Q2 and denied the request on that basis. However, the Applicant's request was for an extension for the purpose of establishing that it was a qualifying entity. Accordingly, the proper procedure should have been to first determine whether the purpose of the request was to determine if the entity was a qualifying entity, then decide whether to grant the extension, and then determine whether the entity is a qualifying entity. Thus, the CRA's reasons on this basis were unresponsive to the Applicant's submissions and not reasonable in light of the process outlined under subsection 125.7(16).

Second, the Court found that the text of subsection 125.7(16) was distinct from the language used in other policies enabling late-filed applications. In other policies, the applications are accepted late (past the due date). In subsection 125.7(16), the language indicates that "the time for filing" itself is extended or postponed. Thus, this basis for the CRA's refusal was a misinterpretation of the ITA.

Finally, the Court noted that if the CRA consistently denied extensions based on the avoidable nature of a mistake and the fact that it was not an error by the CRA, then virtually all extensions would be denied in cases of mistake and the discretion to allow extensions would be undermined. Additionally, discretion cannot be exercised arbitrarily. Guidance from *Vavilov* indicates that the exercise of discretion must accord with the purpose for which it was given. The purposes of the CEWS program included providing support for employers in a time of uncertainty. The CEWS program was characterized by immediacy and flexibility to reassure and accommodate employers, and late filings were permitted for a wide range of reasons. Thus, the CRA's exercise of discretion was not responsive to the purpose and nature of the CEWS program and the Applicant's situation.

Conclusion

The Court held the three bases for the decision were unintelligible, unresponsive to the submissions, and misinterpreted subsection 125.7(16) of the ITA. The Court quashed the decision and remitted the matter to the CRA for redetermination.

—Paige Donnelly, Senior Associate and Ola Mobarak, Articling Student

HARVARD PROPERTIES INC. V. THE KING, 2024 DTC 1105 (TAX COURT OF CANADA)—TCC FINDS VENDORS LIABLE FOR THE PURCHASER'S TAX DEBT UNDER SECTION 160, AS THE VENDORS WERE WILFULLY BLIND TO THE SALE PRICE REFLECTING NON-PAYMENT BY THE PURCHASER OF THE TAX LIABILITY CREATED BY THE TRANSACTION

Background

In 2005, Harvard Properties Inc. (the "Appellant"), which held a co-ownership interest (the "Interest") in a Calgary shopping centre, was approached by a group called Abacus to purchase the Interest.

Abacus proposed a series of transactions whereby the Appellant would incorporate a new corporation ("Newco") and roll the Interest into Newco pursuant to subsection 85(1) of the ITA,[1] receiving as consideration voting shares and non-voting shares of Newco. An Abacus subsidiary, NH Properties, would purchase the voting shares in exchange for a demand promissory note (the "Promissory Note") and cash. Newco would then sell the Interest to an arm's length third party, Bentall, for cash. As a result, Newco would have an increase in its capital dividend account ("CDA") and in its safe income. Newco would increase the stated capital of its non-voting shares by the amount of the increase to the CDA and designate the resulting deemed dividend to the Appellant under subsection 84(1) as a capital dividend under subsection 83(2). That would result in the Appellant's adjusted cost base of the non-voting shares in Newco being increased by the amount of the CDA. The Appellant would then sell the non-voting shares to NH Properties for cash without realizing any gain.

A crucial point is that NH Properties purchased all the Newco shares from the Appellant at a price that was more than the Appellant would have received on an after-tax basis had the Appellant simply sold the Interest. The reason NH Properties could afford to pay this premium was because it planned to shelter the income arising in Newco from the sale of the Interest and it anticipated that the net cash left in Newco from selling the interest minus the cost of that shelter would be more than the premium it was prepared to pay to the Appellant, thus leaving it with a net profit.

As a result, the Appellant received more after-tax cash from the sale of the Interest than if it had sold it directly to a third party. Meanwhile, any tax liability from the sale of the Interest to Bentall fell on Newco (now owned by NH Properties), which did not have the cash to pay that liability (if there were any—see below).

The Canada Revenue Agency ("CRA") assessed the Appellant for approximately $6.5 million under section 160. According to the CRA, the amounts received by the Appellant were non-arm's length transfers of property for consideration less than fair market value ("FMV"). Alternatively, if section 160 did not apply, the assessment was based on the general anti-avoidance rule ("GAAR") in section 245.

Normally, in a section 160 case, the first step is to ask if the transferor had a tax liability and then, if it did, to ask if the transfer had been made at less than FMV. In this case, however, following application for a bifurcation order, the Court directed that a determination of whether Newco actually had a tax liability from the sale of the Interest would be made after a decision had been rendered on whether the other criteria for the application of section 160 or GAAR had been met, which is the decision discussed in this commentary.

Issues and Decision

The TCC ruled that the three conditions for the application of section 160 were met.

First, the TCC found that the payments made by NH Properties to the Appellant for the voting shares and the non-voting shares were direct or indirect payments by Newco to the Appellant within the meaning of section 160, even though on paper those payments had been made to the Appellant by NH Properties, not Newco. This was because Newco lent the cash to NH Properties to make those payments to the Appellant and there was no indication that that loan was a real loan that would be repaid.

Next, the TCC found that the Appellant and Newco were not dealing at arm's length at the time of the indirect payments, even though at that time Newco was owned by NH Properties, which was an Abacus entity. The terms of their agreement did not reflect ordinary commercial dealings, as the price premium received by the Appellant as part of the transactions was "out of whack" with a fair market price, as was the case in *Canada v. Microbjo*, 2023 DTC 5062 (FCA). The Court also added that the Appellant had demonstrated willful blindness with regard to the Abacus group's impossibility of meeting Newco's tax liability resulting from the transactions, as Newco and NH Properties were stripped as part of the transactions.

Finally, the TCC found that the Appellant had failed to demolish the CRA's assumptions that the non-voting shares and Promissory Note were worthless. According to the Court, no reasonable third party would pay to acquire a share or debt of a corporation that was, or was about to be, tax-indebted and stripped of its assets.

In the alternative, the TCC ruled that the transactions constituted abusive avoidance transactions which conferred a tax benefit to the Appellant in a manner that frustrated the object, spirit, and purpose of section 160, thus justifying the application of GAAR. The TCC considered that the appropriate remedy to deny the tax advantage would be to apply section 160 as if it had applied to the transactions.

The TCC found that an assessment based on GAAR would not be statute-barred in this case, as GAAR is not subject to a particular normal reassessment period. In this case, subsection 160(2), which allows the CRA to assess "at any time", was avoided in circumstances to which GAAR applied. Therefore, an assessment under GAAR for the avoidance of section 160 would likewise not be subject to a specific statute-barred period.

The TCC dismissed the Appellant's appeal to the extent Newco had a tax liability, to be determined in a future case.

Comment

The striking point of this case is that it all turned on Newco's tax liability, yet it has not yet been determined if there is any such liability. The Appellant, no doubt for strategic reasons, decided to litigate the issue of whether it was theoretically liable under section 160/GAAR before going to the trouble of finding out if there was any tax for which to be liable. The Court, therefore, based its decision on the assumption that Abacus had left Newco high and dry, with no funds to pay its tax, even though the underlying premise of the entire plan was for Abacus to shelter that tax liability at an acceptable cost. No doubt this assumption left the Tax Court justice with a bad taste and coloured the entire outlook on the case.

—Victor Qian, Associate

ROYAL BANK OF CANADA V. THE KING, 2024 GTC 29 (TAX COURT OF CANADA)— TAX COURT CLARIFIES ITCS METHOD APPROVAL AND GST/HST TREATMENT OF FOREIGN INTERCHANGE SERVICES AND LOYALTY REWARD POINTS

Background[2]

Royal Bank of Canada ("Appellant") was reassessed by the Minister of National Revenue ("Minister") for its reporting period ending October 31, 2012 ("Reporting Period"). The Minister disallowed input tax credits ("ITCs") for goods and services tax ("GST") paid on expenses incurred by the Appellant to earn interchange fees from non-resident merchants and to redeem loyalty reward points earned by cardholders who transacted with those foreign merchants.

The Appellant is a Schedule I bank pursuant to the *Bank Act* (Canada) and is a "selected listed financial institution" ("SLFI"), as defined in the *Excise Tax Act* (Canada) ("ETA"). The Appellant is registered for GST/HST purposes. During the Reporting Period, the Appellant, as a "qualifying institution" as defined in subsection 141.02(1) of the ETA, applied to the Minister for authorization to use particular methods to determine the operative extent and the procurative extent of each of its business inputs ("Method"), pursuant to subsection 141.02(18) of the ETA. The Minister authorized the Appellant to use such Method under subsection 141.02(20) of the ETA.

The Appellant issues credit cards under the systems operated by Visa Canada Corporation and its affiliates ("Visa") and MasterCard International Incorporated and its affiliates ("MasterCard").

In a typical credit card transaction, multiple steps are involved. Particularly, the issuer of the credit card pays the amount charged to the credit card account of the cardholder, through the Visa or Mastercard credit card system, to the merchant acquirer. The issuer reduces such amount by an interchange fee, which is payable by the merchant acquirer to the issuer ("Interchange Service"), as compensation for services rendered during each authorized credit card transaction.

For credit card transactions conducted outside Canada, the Appellant provided services to non-resident merchant acquirers ("Foreign Interchange Fee"). The interchange fee earned by the Appellant varied, with higher fees associated with credit cards that allowed cardholders to earn loyalty reward points redeemable for goods or services.

Issues and Decision

Three issues were presented before the Tax Court of Canada ("TCC"):

(1) Was the Appellant entitled to ITCs as claimed, based on the argument that the Minister was bound by the approved Method (the "Method Issue")?

(2) If the Minister was not bound by the Method, was the Foreign Interchange Service an exempt supply or a zero-rated supply (the "Interchange Issue")?

(3) Were the expenses incurred related with the redemption of loyalty reward points earned on transactions with non-resident merchants part of an exempt or a zero-rated supply (the "Loyalty Reward Points Issue")?

THE METHOD ISSUE

PRELIMINARY OBJECTION

In closing submissions, the Minister contended that the Appellant's argument—that the Minister was without authority under the ETA to deny the ITCs claimed by the Appellant because it was bound by a method it authorized (the "Method Argument")—was not properly before the TCC, as it was raised for the first time in the Appellant's preliminary remarks.

The TCC determined that, on balance, the Method Argument was reasonably described and that the extensive reference to the pre-approved method for the Reporting Period was sufficient to meet the requirement of subsection 301(1.2) of the ETA. Consequently, the TCC rejected the Minister's preliminary objection.

THE METHOD ARGUMENT

The TCC reviewed the statutory scheme of section 141.02 of the ETA, including the relevant jurisprudence, which allows a qualifying institution to apply to the Minister for approval of a methodology to apportion inputs acquired in the making of exempt and zero-rated supplies. Ultimately, the TCC rejected the Appellant's position, concluding that while the Minister approved the Method, the Minister retained the right to audit the claimed ITCs to determine whether they related to an exempt or zero-rated supply, and to reassess accordingly. The pre-approval process does not involve a determination of the tax status of an input and does not preclude the Minister from later determining that an activity involves an exempt, rather than a zero-rated supply.

THE INTERCHANGE ISSUE

The central question was whether the services provided to non-resident merchant acquirers constituted an exempt or zero-rated supply under Part IX, Schedule VI of the ETA.

The TCC agreed with the Appellant's assertion that the Foreign Interchange Service is *prima facie* zero-rated. Section 1 of Part IX, Schedule VI of the ETA identifies zero-rated supplies of a financial service, aimed at ensuring that exported financial services provided to a non-resident are zero-rated. Paragraphs 1(a) to (e) delineate specific "carve-outs"; when these "carve-outs" apply, the financial service will be an exempt supply, rather than a zero-rated supply.

The Minister argued that the Foreign Interchange Service was, pursuant to subparagraph 1(a)(ii) of Section 1 of Part IX, Schedule VI of the ETA, a supply that related to credit card debt that arose from the lending of money, asserting that the Foreign Interchange Service was inextricably connected and dependent on the Appellant's decision to lend money to the cardholders.

However, the TCC, through its review of the relevant jurisprudence, drew a clear distinction between the "granting of credit" and the "lending of money". The TCC determined that the Foreign Exchange Service did not relate to the "lending of money". The true nature of the transaction that allowed the Appellant to earn interchange fees involved the "granting of credit", noting that no money is advanced to the cardholder in a credit card transaction. Accordingly, the "carve-out" in subparagraph 1(a)(ii), which pertains only to the "lending of money that is primarily used in Canada", did not apply.

Moreover, the TCC dismissed the Minister's argument that the lending of money was primarily for use in Canada, as there was no evidence that the cardholders were not in Canada when purchases were made, and that the transactions could have been completed by electronic means. The established law on the sale of goods provides that in cases of international transactions, the place of payment is the seller's place of residence. As a result, the sales took place where the non-resident merchant was located, and not in Canada. Moreover, as the Foreign Exchange Service was rendered to the merchant acquirer, it did not matter where the cardholder was physically located or whether the transaction may have been consummated electronically from within Canada.

THE LOYALTY REWARD POINTS ISSUE

The TCC rejected the Appellant's position that the issuance of points and associated expenses were inextricably linked to the interchange fee revenue, thus justifying the claim for ITCs for the expenses incurred as a direct consequence of providing cardholders the opportunity to earn and redeem loyalty points. The TCC found that the expenses associated with redeeming loyalty reward points were inextricably linked to the Appellant's obligation to extend credit under the Cardholder Agreement and therefore exempt financial services, noting that the award of the loyalty points was not absolute as the Appellant imposed limits and restrictions on redeeming loyalty reward points.

Furthermore, the TCC rejected the Appellant's argument that the issuance of points was part of a "free supply". The Appellant did not have a distinct business of providing Foreign Exchange Service, nor was it involved in an "endeavour", as required by subsection 141.01(4) of the ETA.

Conclusion

The TCC concluded that:

(1) The Minister was not bound by the Method it had pre-approved and retained authority to audit the Appellant's activities;

(2) The Foreign Interchange Service was a zero-rated supply, allowing the Appellant to claim ITCs; and

(3) The Appellant was not entitled to claim ITCs on expenses related to the redemption of loyalty reward points.

—Dragann Mallette, LL.M. Fisc., Senior Associate

CURRENT ITEMS OF INTEREST

PRIME MINISTER RESIGNS, PARLIAMENT PROROGUED

On January 6, Justin Trudeau announced he will resign as Prime Minister when the Liberal Party picks a successor to him as leader. Governor General Mary Simon granted his request to prorogue Parliament until March 24, thus ending the current session. The legislative agenda will be reset once the House of Commons reconvenes.

PROPOSED CAPITAL GAINS INCLUSION RATE LEGISLATION

On September 23, 2024, the Deputy Prime Minister and Minister of Finance tabled a Notice of Ways and Means Motion ("NWMM") to introduce a bill entitled *An Act to amend the Income Tax Act and the Income Tax Regulations*. This NWMM modified the motion tabled on June 10, 2024.

Although these proposed changes are subject to parliamentary approval, consistent with standard practice, the CRA is administering the changes to the capital gains inclusion rate effective June 25, 2024, based on the proposals included in the NWMM tabled September 23, 2024.

For all taxpayers, the new inclusion rate will apply to capital gains realized on or after June 25, 2024. Impacted forms for individuals, trusts, and corporations are expected to be available on Canada.ca as of January 31, 2025. Arrears interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing-due date on or before March 3, 2025. The interest relief will expire on March 3, 2025. More information will be made available in the coming weeks.

DEADLINE FOR CHARITABLE DONATION TAX DEDUCTIONS EXTENDED

On December 30, 2024, Dominic LeBlanc, Minister of Finance and Intergovernmental Affairs, along with the Honourable Élisabeth Brière, Minister of National Revenue, announced the federal government intends to amend the *Income Tax Act* to extend the deadline for making donations eligible for tax support in the 2024 tax year until February 28, 2025. This extension is intended to mitigate the impact of the four-week Canada Post mail stoppage by providing donors with sufficient time to ensure their contributions are received and processed.

2025 AUTOMOBILE DEDUCTION LIMITS AND EXPENSE BENEFIT RATES FOR BUSINESSES

The Department of Finance Canada announced the automobile income tax deduction limits and expense benefit rates that will apply in 2025. The following changes to limits and rates took effect as of January 1, 2025:

- The ceiling for capital cost allowances (“CCA”) for Class 10.1 passenger vehicles will be increased from $37,000 to $38,000, before tax, in respect of vehicles (new and used) acquired on or after January 1, 2025.
- Deductible leasing costs will be increased from $1,050 to $1,100 per month, before tax, for new leases entered into on or after January 1, 2025.
- The limit on the deduction of tax-exempt allowances paid by employers to employees who use their personal vehicle for business purposes in the provinces will increase by two cents to 72 cents per kilometre for the first 5,000 kilometres driven, and to 66 cents for each additional kilometre. For the territories, the limit will also increase by two cents to 76 cents per kilometre for the first 5,000 kilometres driven, and to 70 cents for each additional kilometre.
- The general prescribed rate used to determine the taxable benefit of employees relating to the personal portion of automobile expenses paid by their employers will increase by one cent to 34 cents per kilometre for 2025. For people who are employed principally in selling or leasing automobiles, the rate used to determine the employee’s taxable benefit will also increase by one cent to 31 cents per kilometre for 2025.

The ceiling for CCA for Class 54 zero-emission passenger vehicles ($61,000 before tax in respect of new and used vehicles) will remain the same for 2025, as this limit continues to be appropriate.

The maximum allowable interest deduction will remain the same at $350 per month for new automobile loans entered into on or after January 1, 2025, as this rate continues to be appropriate.

INDEXATION ADJUSTMENT FOR PERSONAL INCOME TAX AND BENEFIT AMOUNTS

Each year, certain personal income tax and benefit amounts are indexed to inflation using the Consumer Price Index data as reported by Statistics Canada. For 2025, the indexation adjustment is 2.7%. Increases to tax bracket thresholds, amounts relating to non-refundable credits, and most other amounts take effect on January 1. Increases in amounts for certain income-tested benefits like the GST Tax Credit, the Canada Child Benefit, and Child Disability Benefit, take effect on July 1. For additional information, visit www.canada.ca/en/revenue-agency/services/tax/individuals/frequently-asked-questions-individuals/adjustment-personal-income-tax-benefit-amounts.html.

RECENT PUBLICATIONS

The following publications were recently issued/updated:

- Businesses: Here are the top changes that will affect business taxes in 2025 (www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2025/top-changes-affecting-business-taxes-2025.html);
- Income Tax Folio S3-F8-C1, Principal-business Corporations in the Resource Industries (www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-3-property-investments-savings-plans/series-3-property-investments-savings-plan-folio-8-resource-properties/income-tax-folio-s3-f8-c1-principal-business-corporations-resource-industries.html);
- Income Tax Folio S1-F1-C1, Medical Expense Tax Credit (www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-1-individuals/folio-1-health-medical/income-tax-folio-s1-f1-c1-medical-expense-tax-credit.html); and
- T4001 Employers' Guide—Payroll Deductions and Remittances (www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4001/employers-guide-payroll-deductions-remittances.html).

INTERNATIONAL NEWS

US INTRODUCES NEW DIGITAL ASSET REPORTING RULES

New reporting obligations have been introduced in the United States regarding digital assets.

Regulations finalized in June 2024 introduced new reporting rules regarding digital assets for transactions taking place in 2025.

In August 2024, the US Internal Revenue Service released draft Form 1099-DA, and instructions for reporting by digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallet providers of gross proceeds. In addition, these taxpayers must issue payee statements to customers beginning in 2026.

Brokers will be required to also report information on the tax basis for certain digital assets beginning in 2027 for sales in 2026.

US LEGISLATION TABLED TO TACKLE TAX AVOIDANCE BY THE ULTRA-RICH

Senate Finance Committee Chair Ron Wyden (D-OR) has released draft legislation to tackle tax avoidance among ultra-rich taxpayers concerning the use of private placement life insurance ("PPLI") contracts.

Wyden said the proposal follows an 18-month investigation by the committee into the use of these arrangements. He said the investigation found that the "ultra-rich used [the] PPLI loophole to abuse special tax rules for life insurance and shelter tens of billions from tax."

A statement on the draft legislation's release said:

> PPLI policies are related in name only to the typical life insurance policies commonly held by middle-class families. Designed to mimic hedge funds and other vehicles for the benefit of sophisticated investors, they are exclusively available to the ultra-wealthy and make up just 0.003 per cent of all outstanding life insurance policies.

Wyden said the legislation—The Protecting Proper Life Insurance from Abuse Act ("PPLI Act")—would protect the longstanding, preferential tax treatment of traditional life insurance and make no changes to the plans that middle class families rely on.

The legislation would separate PPLI policies from traditional life insurance and deem them "Private Placement Contracts" ("PPCs"). Under the legislation, a policy taken out by a wealthy investor would be considered a PPC if it is backed by an insurance company asset account that supports fewer than 25 contracts held by other individual investors. The definition would apply not only to PPLI but also to private placement annuities.

The PPLI Abuse Act stipulates that a PPC would not be treated as a life insurance or annuity contract under the Internal Revenue Code. This means that the earnings and losses of the separate account that supports the PPC would be taxed to the contract holder as they are earned each year.

Wyden said:

> Life insurance is an essential source of financial security for tens of millions of middle class families in America, so we cannot have a bunch of ultra-rich tax dodgers abusing its special tax treatment to set up tax-free hedge funds and shelter oodles of cash.
>
> There's a long tradition of Congress stepping in to prevent the abuse of the preferential tax rules for life insurance, and this bill is the next step in that process. Life insurance is too important to allow it to be twisted into another garden variety tax ripoff for the top.

NEW FRENCH GOVERNMENT SETS OUT TAX PRIORITIES

Having failed to secure lawmakers' approval for a 2025 Finance Law, the French Government has issued a statement detailing the tax measures that it intends to include in a newly negotiated Finance Law that will apply from January 1, 2025.

The statement highlights that, although the proposals do not yet have the force of law, the Government intends to introduce the listed measures retroactively.

The Government stated:

> These indications do not prejudge the outcome of the examination of the Finance Bill by Parliament and do not correspond to an exhaustive inventory of the measures that will come into force on January 1, 2025. The objective is thus to provide clarification on situations that would be legally or operationally impossible to deal with retroactively by the Finance Bill promulgated after 1 January without prior announcement by the Government and which, due to a lack of predictability, could disrupt transactions at the start of the year.

It added:

> Subject to the outcome of the upcoming parliamentary debates, the following clarifications can be made regarding the positions that the Government intends to defend before Parliament during the upcoming examination of the Finance Act for 2025.

The statement discusses several tax breaks that the Government intends to extend that expired on December 31, 2024. Many of the tax reliefs will be extended on the same terms, except for the innovation tax credit, which is to be renewed but with a reduced aid rate of 20%, down from 30%.

The statement confirms the Government's continued support for the introduction of new tax relief measures for taxpayers investing into designated zones, as well as enhanced tax relief measures for agricultural businesses. The statement also addresses the extension of tax relief measures for energy, and the repeal of the tax on hydrofluorocarbons from January 1, 2025.

The Government has also said employers may continue to apply withholding taxes to the salaries, wages, and pensions of persons deemed non-resident under the terms of a tax treaty, pending the outcome of the Axa Group Operations case pending before the Council of State.

Finally, the Government has set out its intended approach regarding the nation's Pillar Two tax regime, providing for the application of a minimum 15% tax rate on the profits of large domestic groups and multinationals.

The Government has said:

> The Government will propose to Parliament to resume the integration into the law of the OECD instructions on the application of "pillar 2" (minimum taxation of the profits of multinationals), as was planned in the Finance Bill tabled on October 10, 2024.
>
> In the meantime, the companies concerned are invited to consider that the OECD guidelines will apply in full in France and that, where options are open to territories, the options retained in the aforementioned Finance Bill will be those that the Government will again propose to Parliament to retain in the continuation of the debates on the Finance Act for 2025.

US IRS ANNOUNCES 2025 STANDARD MILEAGE RATES

The US Internal Revenue Service ("IRS") has announced that the optional standard mileage rate for automobiles driven for business will increase by three cents in 2025, while the mileage rates for vehicles used for other purposes will remain unchanged from 2024.

Optional standard milage rates are used to calculate the deductible costs of operating vehicles for business, charitable, and medical purposes, as well as for active-duty members of the Armed Forces who are moving.

Beginning January 1, 2025, the standard mileage rates for the use of a car, van, pickup, or panel truck will be:

- 70 cents per mile driven for business use, up three cents from 2024;
- 21 cents per mile driven for medical purposes, the same as in 2024;
- 21 cents per mile driven for moving purposes for qualified active-duty members of the Armed Forces, unchanged from last year; and
- 14 cents per mile driven in service of charitable organizations, equal to the rate in 2024.

The rates apply to fully electric and hybrid automobiles, as well as gasoline- and diesel-powered vehicles.

While the mileage rate for charitable use is set by statute, the mileage rate for business use is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes, meanwhile, is based on only the variable costs from the annual study.

Under the Tax Cuts and Jobs Act, taxpayers cannot claim a miscellaneous itemized deduction for unreimbursed employee travel expenses. And only taxpayers who are members of the military on active duty may claim a deduction for moving expenses incurred while relocating under orders to a permanent change of station.

Use of the standard mileage rates is optional. Taxpayers may instead choose to calculate the actual costs of using their vehicle.

Taxpayers using the standard mileage rate for a vehicle they own and use for business must choose to use that rate in the first year the automobile is available for business use. Then, in later years, they can choose to use the standard mileage rate or actual expenses.

For a leased vehicle, taxpayers using the standard mileage rate must employ that method for the entire lease period, including renewals.

Notice 2025-5 contains the optional 2025 standard mileage rates, as well as the maximum automobile cost used to calculate mileage reimbursement allowances under a fixed- and variable rate plan. The notice also provides the maximum fair market value of employer-provided automobiles first made available to employees for personal use in 2025 for which employers may calculate mileage allowances using a cents-per-mile valuation rule or the fleet-average-valuation rule.

US PROPOSES UPDATE TO RULES FOR PRACTISING TAX AGENTS

The US Treasury and the Internal Revenue Service (“IRS”) have issued proposed regulations to update the rules for certain tax professionals who can practice before the IRS, contained in Treasury Department Circular 230.

The IRS Office of Professional Responsibility (“OPR”) generally has responsibility for matters related to practitioner conduct, and exclusive responsibility for discipline, including disciplinary proceedings and sanctions. The proposed regulations, if finalized, would amend Circular 230 in various ways to account for changes in the law and the evolving nature of tax practice.

Among other changes, the proposed regulations would remove or update the parts of Circular 230 related to registered tax return preparers and tax return preparation, as well as contingent fees to reflect changes in the law since the prior amendments to Circular 230 in 2011 and 2014. The proposed regulations would also revise or eliminate other provisions that are out of date.

Additionally, the proposed regulations would incorporate new provisions that better align Circular 230 with the current practice environment, such as requiring that practitioners maintain technological competency as part of their practice before the IRS. The proposed regulations would also clarify some provisions, such as confirming that OPR retains jurisdiction over practitioners who have been suspended or disbarred from practice.

Finally, the proposed regulations would provide rules related to appraisers, including the standards for disqualification.

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[1] All statutory references herein are to the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), as amended (the “ITA”).
[2] The Parties submitted an agreed statement of facts (partial) (“ASF”).