Tax Topics

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Wolters Kluwer

FINANCE NARROWS THE REPORTING REQUIREMENTS FOR BARE TRUSTS

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Trust reporting has been a major issue in Canadian tax for a number of years, as the Department of Finance attempts to expand the reporting requirements.

Bare Trust

First some background. The term "bare trust" has never been defined in the *Income Tax Act* (the "ITA"). For years ending after December 30, 2023, a description was added that essentially covered the concept without naming it: ". . . an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property".[1] Based on Finance's explanatory notes, we know that the arrangement referred to in the ITA is what is commonly called a "bare trust".[2] The Canada Revenue Agency ("CRA") has also issued guidance confirming the same.[3]

Courts have described bare trusts as not being true trusts. They are trusts "where the whole equitable ownership remains in the settlor".[4] In other words, the trust is only an agent of the beneficiaries.

An agent's relationship to a principal is substantially different than a trustee's relationship to a beneficiary.

In CRA's view, a trustee acts as an agent for a beneficiary when the trustee has no significant powers or responsibilities, the trustee can take no action without instructions from that beneficiary, and the trustee's only function is to hold legal title to the property. For the trustee to be considered as the agent for all the beneficiaries of a trust, it would generally be necessary for the trust to consult and take instructions from each beneficiary with respect to all dealings with all of the trust property.

A common example of a bare trust is when a property developer (the "buyer") establishes a trust to hold title to real property, while the developer retains beneficial ownership.[5] This is often done in assembling blocks of adjacent property, so that the current property owners do not learn of the buyer's larger goal. Otherwise, once most of the properties in a block have been acquired, a later seller can hold out and demand a large premium.

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[1] ITA subsections 104(1) and 150(1.3).

[2] Canada. Department of Finance. *Explanatory Notes to Legislation Relating to Income Tax*. Ottawa, 1988, subsection 104(1).

[3] CRA document 2024-1005851C6.

[4] *De Mond Jr. v. The Queen*, 99 DTC 893 (TCC), par. 34.

[5] www.canada.ca/en/revenue-agency/services/tax/trust-administrators/t3-return/new-trust-reporting-requirements-t3-filed-tax-years-ending-december-2023.html#toc2.

Ambiguity

One of the challenges is determining whether an arrangement is truly a bare trust.

The beneficiaries might have substantial control over the trust's decisions, but what if the trustee exercises some *de facto* discretion?

When an individual is aging and wants to facilitate transfer of property on death, it is common to add a child or grandchild to title on real estate, or to the named owner on an account with a financial institution. The objective may be for that relative to effectively inherit the property or to hold it to eventually benefit others.[6]

It is not uncommon for a parent to co-sign a mortgage to benefit a child purchasing a home.

Some people, such as John Oakey, Vice President, Taxation of CPA Canada, have expressed a concern that these arrangements may constitute bare trusts.[7]

Others have asked in a tongue-in-cheek way whether a cellphone plan under a parent's name that is used by a child might constitute a bare trust.[8]

In the civil law province of Quebec (where the common law concept of bare trust does not exist), many have wondered if nominee agreements or *prête-noms* can be construed as bare trusts for the purposes of the ITA.

Things aren't always as black-and-white as they might seem to tax rules writers.

Bare Trust's Historical Filing Obligations

Because a bare trust is an agency arrangement, it can never earn income; the beneficiaries — essentially the principals — earn the income.

Such agency arrangements are excluded from the general trust regime of sections 104 to 108 ITA.[9]

From a reporting perspective, there has been in the past an exemption from filing a return for a trust that has no income,[10] so no return has been required for a bare trust.[11]

History of the Legislation

In the 2018 federal budget, the Department of Finance expressed its concern that the law had "significant gaps with respect to the information that is currently collected with respect to trusts." Not all trusts were required to file tax returns, particularly those with no income.

Consequently, amendments to the ITA were proposed to require more trusts to file returns. These new rules were to be applicable to taxation years ending after December 30, 2021.[12]

There was considerable pushback from the tax community. Many practitioners saw the expansion of the reporting rules as overkill; the exposure to the fisc was seen as minimal. As a result, entry into force was postponed. A new set of draft rules was proposed February 4, 2022, to be applicable to taxation years ending after December 30, 2022.[13]

These rules encountered similar public resistance. After another delay, yet another set of rules was drafted with application for taxation years ending after December 30, 2023.

Considering the ambiguities discussed above in respect of the definition of a bare trust, on March 12, 2024, the CRA said it would not apply gross negligence penalties except in "egregious cases".

On February 27, 2024, the CRA clarified that arrangements such as nominee agreements or *prête-noms* which are not intended to be trusts under the applicable private law should not be construed as bare trusts.[14]

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[6] Sometimes the objective is unclear, so this approach has non-tax risks: decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2355/index.do.

[7] www.advisor.ca/tax/tax-news/cra-extends-relief-for-bare-trust-returns/.

[8] The National Post, Julia Malott, "*The Canadian tax code desperately needs simplification, not additional poorly defined rules*" (April 14, 2024).

[9] ITA subsection 104(1).

[10] ITA paragraph 150(1.1)(*b*)(i).

[11] CRA document 2007-0234381E5.

[12] Notice of Ways and Means Motion tabled February 27, 2018. *Budget Implementation Act, 2018 No. 2*, fin.canada.ca/drleg-apl/2018/bia-leb-1018-l-eng.html.

[13] ITA subsection 150(1.2).

[14] CRA document 2024-1006681E5.

On March 28, 2024, the CRA announced bare trusts would not be required to file returns for 2023.[15] This was the latest of a series of last-minute decisions, coming two business days before the filing due date.[16]

2024 Draft Legislation

New draft legislation was released by Finance on August 12, 2024,[17] in an apparent attempt to remedy some of the shortcomings identified by the tax community.

Subsection 150(1.31) ITA is amended to introduce a rule that will deem certain "beneficial ownership arrangements that would not otherwise constitute a trust for the purposes of the Act to be a trust for the purposes of the beneficial ownership reporting rules".[18]

The draft legislation expands on the concept of "express trust". This term was not specifically defined in the ITA but was understood by CRA to mean trusts made in writing as opposed to constructive trusts.[19] Some beneficial ownership arrangements are now deemed to be express trusts for reporting purposes.

Subsection 104(1) ITA is also amended to remove a reference to section 150 ITA in order to exclude beneficial ownership arrangements from the application of the general trust rules regime.

The wording of the amended subsection 150(1.31) ITA effectively excepts situations where a person is listed on title but has no effective control or use of the property.

Finance then added a further series of exceptions:

A. A person is a legal owner, and there are no legal owners that are not beneficiaries;

B. All the legal owners are related, and the property would be a principal residence of one or more if it were so designated (the designation only gets made upon sale);

C. The legal owner is an individual and the property held for the benefit of that individual's spouse or common-law partner, and it would be a principal residence of the legal owner if it were so designated;

D. All of,

   i. The property is held solely for the use or benefit of a partnership,

   ii. Each legal owner is a partner (other than a limited partner), and

   iii. The partnership is required to file a return for the calendar year;

E. The legal owner holds the property pursuant to a court order;

F. The property is a Canadian resource property and held for use by a publicly-traded entity; or

G. The property is held for the use of a government-funded tax-exempt entity.

D. addresses a portion of the real estate development community's concerns, but not all development activities are structured as general partnerships, so we expect further pushback on this provision.

Thus, by defining the provision more carefully, some of the "stretch" situations that were of concern are excluded (especially the ones surrounding inheritance).

It may have been useful to add a *de minimis* exception to exclude the egregious case of the cellphone plan owned by a parent but used by a child.

In its proposal, Finance also expands the scope of trusts exempted from reporting:

- Where each trustee is an individual, each beneficiary is related to each trustee, and the total fair market value of property does not exceed $250,000 throughout the year. For this exemption to apply, the property must be cash, GICs issued by a Canadian bank, publicly traded securities, a widely traded mutual fund interest, or similar type of asset.

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[15] www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2024/bare-trusts-exempt-from-trust-reporting-requirements-2023.html.

[16] For another example, see the Underused Housing Tax return changes.

[17] fin.canada.ca/drleg-apl/2024/ita-lir-0824-l-3-eng.html.

[18] Canada. Department of Finance. *Explanatory Notes to Legislation Relating to Income Tax*, published by the Hon. Chrystia Freeland, August 2023, subsection 104(1).

[19] www.canada.ca/en/revenue-agency/services/tax/trust-administrators/t3-return/new-trust-reporting-requirements-t3-filed-tax-years-ending-december-2023.html#toc2.

- A trust which is "required under the relevant rules of professional conduct or. . . laws. . . to hold funds for the purposes of an activity that is regulated, provided
  - The trust is not maintained as a separate trust for a particular client or clients or
  - The only assets held by the trust throughout the year are money with a value that does not exceed $250,000".[20]

It appears a lawyer's trust accounts will not require reporting if each consists of cash with a value under the threshold.

These changes are proposed to apply to taxation years ending after December 30, 2024. As most trusts have calendar year ends, this would apply generally to the 2024 year.

The new proposals go some way towards addressing the tax community's concerns about unnecessary reporting, but there will likely be further protests by some practitioners.

CURRENT ITEMS OF INTEREST

Department of Finance Releases New Tax Proposals

On August 12 the Department of Finance published new legislative proposals that would implement numerous measures first announced in the 2024 federal budget. For many of these measures we are seeing proposed legislation for the very first time.

2024 Federal Budget and Other New Measures

The Department of Finance published legislative proposals that would implement many of the tax measures announced in the 2024 federal budget and some brand-new measures. These measures include the following:

- Canadian Entrepreneurs' Incentive
- Disability Supports Deduction
- Employee Ownership Trust Tax Exemption
- Charities and Qualified Donees
- Clean Electricity Investment Tax Credit
- Accelerated Capital Cost Allowance for Productivity — Enhancing Assets
- Accelerated Capital Cost Allowance for Purpose-Built Rental Housing
- Interest Deductibility Limits — Purpose-Built Rental Housing
- Non-Compliance with Information Requests
- Avoidance of Tax Debts
- Mutual Fund Corporations
- Synthetic Equity Arrangements
- Manipulation of Bankrupt Status
- Withholding for Non-Resident Service Providers
- Workers Cooperatives
- Registered Education Savings Plans
- Clean Technology Investment Tax Credit
- Clean Hydrogen Investment Tax Credit
- Clean Technology Manufacturing Investment Tax Credit
- Proposals relating to various Clean Economy Tax Credits
- Other consequential amendments related to the Clean Electricity Investment Tax Credit

[20] Proposed ITA paragraphs 150(1.2)(*b*), (*b*.1).

The proposals also include certain amendments relating to substantive CCPCs that were originally released on August 9, 2022.

Capital Gains Inclusion Rate

The Department of Finance published newly updated proposals that would implement the increase to the capital gains inclusion rate from one-half to two-thirds. Explanatory notes have also been provided.

Global Minimum Tax

The Department of Finance also released proposals that would amend the *Global Minimum Tax Act* and *Income Tax Conventions Interpretation Act*. These would implement the Undertaxed Profits Rule per Canada's commitment to a global minimum tax under BEPS Pillar Two.

Technical Amendments

The Department of Finance published many proposed technical amendments to the *Income Tax Act* and *Income Tax Regulations*. These technical amendments notably include clarifying bare trust reporting rules and ensuring Canadians who rent a home are not held responsible for their non-resident landlords' unpaid taxes. Explanatory notes are also available.

Indirect Tax Measures

Also published were several legislative proposals affecting indirect tax legislation, including the *Excise Tax Act*, *Excise Act, 2001*, *Underused Housing Tax Act*, and *Select Luxury Items Tax Act*. These notably include removing the GST for co-operative housing built for the long-term rental market.

CRA Contact Centres Hours Extended

The Taxpayers' Ombudsperson, François Boileau, made a service improvement request to the CRA in March 2024, asking it to make changes to prevent an issue blocking callers from reaching the CRA during its contact centres' regular hours of service.

The CRA's contact centres for its individual and business tax enquiries lines were open Monday to Friday from 8:00 a.m. to 8:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m., local time. However, the Office of the Taxpayers' Ombudsperson ("OTO") found that the CRA's telephone system was preventing callers from reaching an agent if the contact centre was not open in the time zone associated with the caller's phone number.

For example, if someone had moved from Vancouver, BC to St. John's, NL, but had kept their Vancouver phone number, they would not have been able to reach a CRA contact centre if they called from St. John's at 10:30 a.m. The CRA's telephone system would have told the caller that the contact centre was not open because it would be 6:00 a.m. in Vancouver.

Although this issue had the potential to affect a large segment of the population, it had a particular impact on Northern residents. The CRA has dedicated phone lines so these callers can speak to an agent equipped to answer questions about tax affairs specific to Northern residents. However, callers cannot reach these lines if they do not have a phone number with an 867 area code.

To improve the service the CRA provides to Canadians, the Taxpayers' Ombudsperson requested that the CRA:

- communicate to Canadians how their area code could prevent them from reaching the CRA;
- communicate to Canadians how they can reach the contact centre if the CRA is blocking their number because of their area code;
- allow all territorial residents to call the dedicated telephone service for Northern residents, regardless of their telephone number; and
- accept calls to its contact centres regardless of the caller's telephone number, as long as an agent is available.

Since the Taxpayers' Ombudsperson made this request, the CRA has improved the service by extending the hours for its individual and business tax enquiries lines and the dedicated telephone lines for the residents of the Territories to provide taxpayers with equal access during its hours of service, regardless of the caller's area code, as long as an agent

is available. The contact centres are now open Monday to Friday from 6:30 a.m. to 11:00 p.m. and Saturday from 7:30 a.m. to 8:00 p.m., Eastern time.

However, the CRA has not made the same changes to its Northern residents lines, stating that it does not want to make it possible for the general public to access these lines. Instead, it now informs callers who do not have an 867 area code about why their call is being restricted. The CRA also includes this information on its web page for this service. There is not currently a way for someone in the North to call these lines without a phone number with an 867 area code.

Recent Publications

The following documents were recently published/updated:

- Mandatory disclosure rules — Guidance;
- S3-F6-C1, Interest Deductibility; and
- Guidance on Country-by-Country Reporting in Canada.

INTERNATIONAL NEWS

US IRS Announces Reliefs for Flood-Hit Taxpayers in Six States

In a series of announcements, the US IRS has extended deadlines for taxpayers in various states in response to Hurricane Debby and localized flooding.

Initially, on August 9, 2024, the IRS announced relief for taxpayers affected by Hurricane Debby in South Carolina, and those residing in 66 counties in North Carolina, 61 counties in Florida, and 55 counties in Georgia. On August 12, 2024, the IRS announced relief measures to taxpayers affected by flooding in 25 Minnesota counties, and on August 13, 2024, the hurricane-related reliefs were extended to taxpayers in all 14 counties of Vermont.

The tax relief for taxpayers affected by Hurricane Debby postpones various tax filing and payment deadlines that occurred from August 8, 2024, through February 3, 2025. As a result, affected individuals and businesses will have until February 3, 2025, to file returns and pay any taxes that were originally due during this period.

This means, for example, that the February 3, 2025, deadline will now apply to:

- Any individual, business, or tax-exempt organization that has a valid extension to file their 2023 federal return. The IRS noted, however, that payments on these returns are not eligible for the extra time because they were due last spring before the hurricane occurred;
- Quarterly estimated income tax payments normally due on September 16, 2024, and January 15, 2025; and
- Quarterly payroll and excise tax returns normally due on October 31, 2024, and January 31, 2025.

For taxpayers in Minnesota, the relief period is longer. The tax relief postpones various tax filing and payment deadlines that occurred from June 16, 2024, through February 3, 2025. As a result, affected individuals and businesses will have until February 3, 2025, to file returns and pay any taxes that were originally due during this period.

This means, for example, that the February 3, 2025, deadline will now apply to:

- Any individual, business, or tax-exempt organization that has a valid extension to file their 2023 federal return;[1]
- Quarterly estimated income tax payments normally due on June 17 and September 16, 2024, and January 15, 2025; and
- Quarterly payroll and excise tax returns normally due on July 31 and October 31, 2024, and January 31, 2025.

The IRS has also announced penalty relief in respect of payroll and excise tax deposits, with the deadlines applicable specific to each state.

[1] The IRS noted, however, that payments on these returns are not eligible for the extra time because they were due last spring before the storms occurred.

In addition, individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (in this instance, the 2024 return normally filed next year), or the return for the prior year (the 2023 return filed this year). Taxpayers have extra time — up to six months after the due date of the taxpayer's federal income tax return for the disaster year (without regard to any extension of time to file) — to make the election.

UK, IoM to Lower Interest Rate on Late Tax

The UK and Isle of Man Governments have confirmed that they will lower the rate of interest on late payments later this month.

The Bank of England Monetary Policy Committee decided on August 1 to reduce the Bank of England base rate to 5% from 5.25%. HMRC interest rates are linked to the Bank of England base rate.

As a consequence of the change in the base rate, HMRC interest rates for late payment and repayment will fall by 0.25%. Late payment interest is set at base rate plus 2.5%. Repayment interest is set at base rate minus 1%, with a lower limit — or "minimum floor"— of 0.5%.

The late payment interest rate will be 7.5%, and the repayment interest rate will be 4%.

These changes will come into effect on:

- August 12, 2024, for quarterly instalment payments; and
- August 20, 2024, for non-quarterly instalments payments.

The Isle of Man, which has an agreement with the UK to keep the management and administration of VAT and other indirect taxes aligned, will follow the same schedule.

US Tax Agencies, Tax Pros Taking Aim at Tax Scams and Schemes

US federal and state tax authorities, tax professionals, and software and financial companies have agreed to establish a new task force called the Coalition Against Scam and Scheme Threats ("CASST").

The US Internal Revenue Service said the new combined effort follows a variety of increased scams and schemes that intensified during the past filing season that aimed to exploit vulnerable taxpayers while enriching fraudsters and promoters.

In all, more than 60 different groups from the private sector have signed on to the initiative, either individually or as part of a group.

The CASST will work to expand outreach and education about emerging scams, develop new approaches to identify potentially fraudulent returns at the point of filing, and create infrastructure improvements to protect taxpayers as well as federal, state, and industry tax systems.

IRS Commissioner Danny Werfel said:

> Across the spectrum of the tax system, we've seen a rising tide of scams and schemes that try to exploit taxpayers and find gaps in government and industry defenses. This new collaborative approach will allow the private and public sectors to throw our combined weight against this threat. We will do more to work closely together, share information faster, respond quickly to threats and quickly alert the public to new and emerging threats. Our goal is to have a mass effect on this expanding problem that's spread on social media and through bad actors.

The IRS said:

> The new coalition is an outgrowth of the Security Summit effort, and while the new collaborative effort will not replace the Summit, the scams coalition will be closely modeled on the Summit. The Security Summit was launched in 2015 by the same groups to stem the growth in tax-related identity theft.

Under the initiative, the IRS, states, and the private sector will work to put in place new protections by filing season 2025. The combined effort is particularly important because the group has seen instances where scammers look for weak points in government systems and the private sector to exploit, the IRS said. The combined effort will improve

defenses across both the private and public sector with a goal of making it more difficult for scammers to slip improper or false tax returns through the system.

The group will also work to make long-term structural changes to fundamentally improve the ability to identify and stop scams. This includes working to improve EFIN and PTIN validation and new steps to combat "ghost preparers," who prepare tax returns for a fee and do not in any way sign a tax return or disclose their role on the tax return as the preparer.

UK Confirms Reforms to Energy Profits Levy

The UK Treasury has recently provided detail on proposed changes to the Energy (Oil and Gas) Profits Levy ("EPL"), initially announced in the new Government's manifesto.

The Government has announced that the rate of the EPL will increase to 38% from November 1, 2024, bringing the headline rate of tax on upstream oil and gas activities to 78%.

The period that the levy applies is also being extended to March 31, 2030, from March 31, 2029.

The Government will also remove generous investment allowances from the EPL by abolishing the levy's main 29% investment allowance for qualifying expenditure incurred on or after November 1, 2024, and by reducing the extent to which capital allowances can be taken into account in calculating levy profits.

The Government has said there are no plans to change the availability of capital allowances in the permanent regime. It will also retain the 80% decarbonisation investment allowance.

Further details are to be announced in the next UK budget.

US Relaunches Employment Retention Credit Amnesty

On August 15, 2024, the US Internal Revenue Service reopened the Employment Retention Credit ("ERC") Voluntary Disclosure Program ("VDP").

The VDP will be offered until November 22. It offers a 15% discount to companies who regularize their affairs.

During the first disclosure program that ended in March, there were more than 2,600 applications from ERC recipients, with disclosures worth US$1.09 billion.

"The limited reopening of the Voluntary Disclosure Program provides an opportunity for those with improper claims to come in ahead of IRS compliance work and get a discount on repayments," said IRS Commissioner Danny Werfel. "This is especially important given increasing IRS compliance actions involving bad claims, many of them are the result of aggressive marketing tactics to lure unsuspecting businesses into claiming the complex credit. This provides a final window of opportunity for those misled businesses to make adjustments and avoid future compliance action by the IRS."

The IRS said, in recent weeks, the agency has dispatched about 28,000 disallowance letters to businesses whose pending claims showed a high risk of being incorrect. The IRS estimates that these disallowances will prevent up to US$5 billion in improper payments.

Full details are available in newly released IRS Announcement 2024-30.

RECENT CASES

Companies Not Connected According to S. 186(4)

The Appellant sought to appeal the reassessment of her 2015 tax year by the Minister of National Revenue under section 84.1 of the *Income Tax Act* ("ITA"), which concerned the sale of her shares in a family business. The issues at hand were whether the Appellant dealt at arm's length with Corco, the purchasing company, at the time of the purchase, and whether Corco was connected to BPL immediately after the purchase. BPL, a paving business in New Brunswick, was originally started by the Appellant's grandfather in 1957 and passed to her father, who became the sole shareholder after his brother's death. The Appellant's father brought his nephew ("Mr. McAllister"), into the business due to his civil engineering background, which complemented the father's skills. The Appellant also joined BPL, working

her way up from a road flagger to a heavy equipment operator and estimator, while pursuing relevant education. By 2014, Mr. McAllister believed the business needed cost control and approached the Appellant to buy her shares. Although initially surprised, the Appellant eventually agreed to sell her shares for $600,000, contingent on receiving full payment at closing and structuring the sale to benefit from her capital gains exemption. Mr. McAllister did not have the funds, so a plan was devised: BPL borrowed $600,000, which Corco, Mr. McAllister's holding company, used to purchase the Appellant's shares through a promissory note. BPL then redeemed the shares from Corco. The Appellant reported a capital gain on her tax return, while Corco claimed a deduction under section 112, resulting in no tax liability. However, the Minister reassessed the Appellant, replacing the capital gain with a deemed dividend under section 84.1.

The reassessment of the Appellant's 2015 tax year was vacated. The Court examined whether the Appellant and Corco were dealing at arm's length and whether Corco and BPL were connected post-transaction. It was concluded that the Appellant and Corco were at arm's length because the Appellant and Mr. McAllister engaged in hard bargaining with separate interests. The transactions primarily benefited Corco, enabling Mr. McAllister to further his long-term plan of owning BPL, while the Appellant sought to maximize her return from the sale. Furthermore, the Court found no evidence that the Appellant's father, who retained voting control, dealt with Corco at non-arm's length; therefore, Corco and BPL were not connected within the meaning of subsection 186(4). Thus the reassessment of the Appellant's 2015 tax year was vacated, and consequently, the reassessments for the 2016, 2017, and 2018 tax years concerning alternative minimum tax carryovers were also vacated.

¶51,338, *Carter v. The King*, 2024 DTC 1053

Appellant's Father Was Not a Resident, Therefore Ineligible for Medical Expense Deduction

The Appellant's father came to visit from Guyana intending to stay for about two weeks. The father had a major heart attack, spending about eight weeks in hospital and incurring a bill of over $18,700, which the Appellant paid. The Appellant sought to deduct these expenses as an allowable amount of medical expenses for other dependants; the CRA denied the deduction, and confirmed the denial when the Appellant objected. The Appellant appealed.

The Tax Court dismissed the appeal. The only issue in dispute was whether the father satisfied the definition of "dependant" in paragraph 118(6)(*b*) of the *Income Tax Act* ("ITA") as "resident in Canada at any time in the year." The Appellant maintained that the term meant "legally residing in Canada any time between January 1 to December 31 in a specific year" and the father qualified by virtue of his six-month visa. The Respondent maintained that the ITA employs the common-law definition of residency, which embodies the concept of "ordinarily resident in Canada". The Court first explained the rule of interpreting repeated words in legislation as stated by the Supreme Court: "Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an act." The Textual Notes to paragraph 118(6)(*b*) use the phrase "at some time during the year," and the ITA uses it 17 times. Since "at any time of the year" modifies "resident," the normal rules of residency apply. Under these rules one can be either a deemed resident or a factual resident. The Appellant's father was not a deemed resident (because he did not spend 180 days in Canada) and not a factual resident (there was no evidence he was planning to stay beyond a short visit, unexpectedly extended because of his heart attack). Therefore, the Appellant was not eligible for the deduction.

¶51,337, *Persaud v. The King*, 2024 DTC 1044

Minister Can Request Information From Residents and Non-Residents

The Applicant ("Minister") sought a compliance order under section 231.7 of the *Income Tax Act* ("ITA"), aiming to compel the Respondent to provide documents and information requested by the Minister in a demand issued on July 5, 2022. The Respondent, a successful businessman, declared himself a non-resident of Canada after December 28, 2016, primarily residing in the Bahamas. However, he maintained ties to Canada, including ownership of Canadian properties, engagements with Canadian companies, and incorporation of Canadian corporations. In 2022, the CRA initiated an audit of the Respondent for the years 2016 to 2019 to determine his residency status and compliance with tax obligations. A demand was issued to him to provide specific documents related to entities he was associated with, including financial records, intercompany agreements, and tax filings. Despite extensions, the Respondent failed to fully comply with the demand. The CRA initiated compliance proceedings, arguing that the Respondent, regardless of residency, was obligated

to provide the requested information under the ITA. The Minister asserted that the compliance provisions applied to any person in Canada, irrespective of residency status. They contended that verifying residency status and ensuring compliance with tax obligations required access to relevant documents. The Respondent argued that the compliance provisions did not apply to him as a non-resident and that the Minister needed to determine his residency status first. He maintained that his non-resident-related entities were not taxpayers under the legislation and thus not subject to the demand for information.

The application was granted in part. The dispute revolved around whether non-residents were obligated to provide information under section 231.1 of the ITA and whether the Respondent's non-resident entities fell under the definition of taxpayers. The Court held that the interpretation of the term "taxpayer" under the ITA is broad and includes both residents and non-residents who are liable to pay tax under Part I of the ITA. While the term "taxpayer" is not explicitly defined to exclude non-residents, the legislation grants the Minister expansive powers to gather information, including from non-residents. This is crucial for ensuring compliance with tax regulations, particularly in a self-reporting taxation system where some individuals may attempt to evade their tax liability. The purpose of sections 231.1 and 231.7 is to facilitate the Minister's access to information for auditing purposes, regardless of residency status. Therefore, the Minister can request information from both residents and non-residents to verify compliance with the ITA. Additionally, foreign-based information may be required under section 231.1 if it is located or available inside Canada, and there is a connection between the entities involved. The Respondent in this case was required to provide specific information and documentation to the Minister within a specified timeframe to assist in the audit process. Thus the application was granted in part.

¶51,362, *MNR v. Schreiber*, 2024 DTC 5082

Mother Entitled to Full CCB

An appeal was filed against the notices of redetermination pursuant to section 122.6 of the *Income Tax Act* relating to the years 2015, 2016, and 2017, during which the Appellant received the full amount of the Canada Child Benefit ("CCB"). By virtue of a divorce judgment, the Appellant had legal custody of her two children and the father had extended access rights, i.e., every other weekend, from Saturday 9:00 a.m. to Monday 9:00 a.m. and two nights during the week, from 5:00 p.m. to 8:30 a.m., every week. However, the father declared to the CRA that he was a parent with shared custody, stating that he had custody of his children three full days out of seven, every week. This resulted in an alleged overpayment of the CCB which was recovered from the mother. The legal question that arose was whether the children resided at least 40% of the time with their father and whether, during that time, the father was primarily responsible for their care and upbringing in the manner provided for in Reg. 6302 of the *Income Tax Regulations*.

The appeal was allowed without costs and returned to MNR for redetermination. The evidence demonstrated, based on the credible testimony of the mother (as opposed to that of the father, whose reliability had been called into question given his numerous memory lapses and the fact that he made an inaccurate declaration to the CRA), that the father was not a shared-custody parent and the mother was entitled to the full amount of the CCB. Neither the Federal Court of Appeal nor the Tax Court of Canada have specified the precise method of calculation applicable to school days in order to establish the minimum percentage of child care time of 40% or to determine which parent is primarily responsible for the care and upbringing of children during their school days. The calculation depends on the particular circumstances and facts. Thus, according to the preponderance of the evidence presented to the Court, the children did not reside at least 40% of the time with their father, with overnight stays during the week not being considered full 24-hour care because the children are at school. The Court also concluded that the mother was primarily responsible for the care and upbringing of the children during each school day, although the school may have been permitted to contact either parent when the father exercised his access rights two evenings during the week.

¶51,336, *Lévesque St-Cyr v. The King*, 2024 DTC 1043

No GAAR: Transactions Were Not Abusive

The Appellant was taxed on its worldwide income under the taxing regime for a Canadian-controlled private corporation ("CCPC") until April 29, 2015, when it continued in a foreign jurisdiction (the British Virgin Islands) such that it was deemed to be incorporated outside of Canada; however, it remained a resident of Canada, taxed on its

worldwide income. As such, it was no longer subject to section 123.3 of the *Income Tax Act* ("ITA"), which levies a $10^{2}/_{3}$% refundable tax on a CCPC's investment income. Further, paragraph 123.4(1)(*b*) ceased to apply, meaning that the Appellant was now entitled to claim a 13% general rate reduction in respect of its investment income. The Respondent applied the GAAR to the Appellant's 2016 taxation year return on the basis that section 123.3 applied and that the Appellant was not entitled to the 13% reduction under paragraph 123.4(1)(*b*). The Appellant filed this 2016 return on the basis that, during the 2016 taxation year, the Appellant (a) was a corporation resident in Canada, subject to tax on its worldwide income under the ITA; (b) was a "private corporation" as that term is defined in subsection 89(1) of the ITA; and (c) the Appellant was not a CCPC under the ITA.

The Tax Court allowed the appeal. The Court conducted an exhaustive analysis, ranging over applicable statutes, the case law, the 2000 Budget Plan, and even law review articles. The Court first analyzed the Respondent's GAAR claim. It found that the conditions that the Appellant's transactions (a) had a tax benefit and (b) were avoidance transactions were satisfied; however, after an extensive textual, contextual, and purposive analysis of the object, spirit, and purpose of the relevant statutes, including sections 123.3 and 123.4 and subsection 250(5.1), the Court concluded that the transactions were not abusive. The Appellant's sole director conducted the avoidance transactions in order to gain what amounted to a personal tax deferral, and those transactions proceeded as the statutes required.

¶51,355, *DAC Investment Holdings Inc. v. The King*, 2024 DTC 1052

Deductions Denied, Appeal Dismissed

The Appellant, Johanne Caron, contested the notices of reassessment established for her years 2012 and 2013 with regard to income from several rental properties and capital gains from the sale of two of these properties. The assessments concerned, more particularly, the refusal of a deduction of $154,000 claimed as interest and the correlative assessment with regard to the retrospective carryover of a capital loss, the increase in capital gains derived from the sale of two properties, and the refusal of maintenance and repair expenses incurred in the calculation of rental income. The Appellant says she was defrauded by a certain Mr. Trudeau from whom she borrowed certain amounts which she repaid. The latter held mortgage guarantees on the two properties in question.

The appeal was dismissed with costs. The appeal was dismissed with regard to each of the grounds invoked by the Appellant. Although the Court was convinced of the good faith of the Appellant and her witness, the evidence did not support her reasons for appeal. The Court first observed that financial losses suffered at the hands of fraudsters are not a deductible loss for the purposes of calculating income tax. As the Court was also unable to establish a sufficient link between the financing that the Appellant obtained from Mr. Trudeau and her rental activities, her losses and the costs linked to the financing obtained from Mr. Trudeau are not deductible. Given that the CRA rightly refused to deduct these amounts that do not qualify as deductible interest, there are no losses in 2013 that could be carried back retrospectively. When it comes to maintenance and repair expenses, there were simply no invoices to support them. Likewise, as the initial costs and the sale prices of the two properties were not contested and appeared in the notarized documents, there was no reason to reduce the capital gains realized on the disposition of these properties as determined by the CRA.

¶51,339, *Caron v. The King*, 2024 DTC 1054

Reassessments Beyond Deadline To Be Treated as Adjustment Requests, Which Are Unappealable

The tangled procedural history of this case began on November 5, 2012, when the CRA reassessed the Appellant to add net business income of $247,143 to her 2011 taxation year. This initiated a back-and-forth between the Appellant and the CRA that encompassed four more reassessments, numerous requests for adjustments, and minor adjustments that finally resulted in this appeal of the fifth reassessment, with motions before the Court by both parties — the CRA's to quash the appeal, the Appellant's seeking relief with respect to alleged errors in the service of the CRA's motion.

The Tax Court dismissed the Appellant's motion and granted the CRA's, quashing the appeal. The Appellant's position was factually accurate, but the CRA's position was technically correct in law. This was so even though its responses to the Appellant contained numerous errors. The Appellant's motion failed because (a) there was no deadline for the CRA

to miss in filing its motion record; and (b) Rule 67 of the *Tax Court of Canada Rules (General Procedure)* did not require personal service of the motion record; nonetheless, the CRA served the Appellant by courier and then by process server. The key to granting the CRA's motion was paragraph 152(3.1)(*b*) of the *Income Tax Act*, which effectively grants the CRA a three-year deadline from the issuance of an assessment to reassess. This meant that for the 2011 taxation year, the Appellant's "normal reassessment period" ended on March 5, 2015, three years after the day the Notice of Assessment was issued on March 5, 2012. Thereafter, the CRA was obliged to, and did, treat the Appellant's later requests for adjustments as taxpayer relief requests under paragraph 152(4.2)(*a*) — from which there is no appeal to the Tax Court, although an appeal would lie to the Federal Court. The CRA's errors — of which the Court discussed five — did not change the law.

¶51,360, *Cole v. The King*, 2024 DTC 1057

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