Tax Topics

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ADP

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COVID-19 UPDATE

Canada

Canada Emergency Wage Subsidy Update (March 30, 2020)

On March 27, a news release from the Prime Minister's office announced that the wage subsidy for eligible businesses will increase to 75% from the originally-announced 10%. The subsidy applies retroactively from March 15 and ends after three months. Per the legislation that was enacted as a part of Bill C-13, a taxpayer can reduce its source deductions accordingly.

On March 30, the Prime Minister provided some further guidance on the wage subsidy. First, the subsidy will cover up to $847 of an employee's weekly salary. To be eligible, an employer must demonstrate that its revenue has fallen by at least 30% due to COVID-19. The Prime Minister stated that the size of the business will not affect whether it is eligible for wage assistance.

The Minister of Finance will provide further information on the wage subsidy on March 31.

Government Responds With More COVID-19 Measures (March 27, 2020)

On March 27, the federal government announced new tax measures to help taxpayers with the COVID-19 situation.

The government announced that it will defer payments of GST/HST until June 30, 2020. For monthly GST/HST filers, this applies to amounts for the February, March, and April reporting periods. For quarterly GST/HST filers, this deferral applies to tax collected in the reporting period from January 1, 2020 to March 31, 2020. For annual GST/HST filers whose return or installment is due in March, April, or May 2020, this deferral applies to amounts collected and owing for the prior fiscal year and installments owing for the current fiscal year.

Also, for import duties and sales taxes, payment deadlines for statements of accounts for March, April, and May are being deferred to June 30, 2020.

The government also announced several new loan programs for businesses.

The government is launching the Canada Emergency Business Account, which will allow banks to provide government-guaranteed loans of up to $40,000, $10,000 of which will be forgivable. The loans will be interest-free for one year. Qualifying organizations must demonstrate that they paid between $50,000 to $1 million in total payroll in 2019. Repaying the balance of the loan on or before December 31, 2022 will result in loan forgiveness of 25%.

Export Development Canada is committing $20 billion to guarantee new operating credit and cash flow term loans that financial institutions extend to small and medium businesses that are domestic or in the export sector.

The government is also launching a $20 billion co-lending program between the Development Bank of Canada and financial institutions in order to lend to small and medium businesses. Eligible businesses may obtain incremental credit amounts up to $6.25 million.

Parliament Passes COVID-19 Emergency Response Act (March 24, 2020)

Bill C-13, *COVID-19 Emergency Response Act*, was passed by the House of Commons on March 24, 2020, and on the following day was passed by the Senate and received Royal Assent. The bill enacted all of the tax measures announced on March 18, 2020 in *Canada's COVID-19 Economic Response Plan: Support for Canadians and Businesses*, or at least the ones that required legislation to come into effect.

Emergency Response Benefit

Initially, the government proposed two emergency benefit payments: the Emergency Care Benefit, and the Emergency Support Benefit. However, these two measures were instead combined into a single allowance called the Emergency Response Benefit, which was enacted under Part 2 of Bill C-13 on March 24. It is a taxable benefit of up to $2,000 per month for up to four months — the benefit is taxable but tax will not be deducted at source. Eligible individuals include people who have lost their job, are sick, quarantined, or taking care of someone who is sick with COVID-19, or working parents who must stay home without pay to care for children who are sick or at home because of school and daycare closures. Workers who remain employed but are losing income because of COVID-19 are also eligible.

With regard to how the payment amounts are calculated, the bill simply states that the amount is fixed by regulation. Hopefully, the government will soon introduce regulations that specify how much workers can expect to receive. The online portal to apply for the Emergency Care Benefit will open in early April, and the government promises the funds will be paid within 10 days of an application being made. The benefit will be paid every four weeks and be available from March 15, 2020 until October 3, 2020.

CRA Compliance Update (March 30, 2020)

Over recent days, the CRA has announced various tax relief measures such as filing and payment deferrals and suspension of compliance activities. The following is a compilation of all the tax relief steps the CRA has taken thus far.

Payments and Remittances

- The deadline to pay any balance due for an individual income tax and benefit return for 2019 has been extended from April 30, 2020, to September 1, 2020. The filing deadline, however, has only been extended to June 1, 2020.
- For self-employed individuals or those who have spouses or common-law partners that are self-employed, the deadline to pay any balance due for an individual income tax and benefit return has been extended from April 30, 2020, to September 1, 2020. The deadline for filing remains June 15, 2020.
- Administrative income tax actions required of taxpayers by the CRA that are due after March 18, 2020 can be deferred to June 1, 2020; these include filing returns, elections, designations, and information requests; payroll deductions payments and all related activities are not deferred.
- The deadline for corporations to pay any income tax amounts that become owing or due after March 18, 2020 and before September 1, 2020 has been extended to September 1, 2020.
- The deadlines for T5013 partnership and NR4 information returns are extended to May 1, 2020.
- For trusts with a year-end of December 31, 2019, the filing deadline is extended to May 1, 2020. The deadline is extended to June 1, 2020 for trusts that would otherwise have a filing due date in April or May.
- All trusts that have an upcoming income tax balance due date or an income tax instalment payment due date before September 1, 2020 will have their payment due date effectively extended to September 1, 2020.

- The following GST/HST remittances have been deferred until June 30, 2020:
  - Monthly filers have to remit amounts collected for the February, March, and April 2020 reporting periods;
  - Quarterly filers have to remit amounts collected for the January 1, 2020 through March 31, 2020 reporting period; and
  - Annual filers, whose GST/HST return or instalment are due in March, April, or May 2020 have to remit amounts collected and owing for their previous fiscal year and instalments of GST/HST in respect of the filer's current fiscal year.
- Payments of customs duty and sales tax for importers for statements of accounts for March, April, and May are being deferred to June 30, 2020.

Administration and Enforcement

- Any objections related to entitlement to benefits and credits will continue to be processed during the COVID-19 crisis; there should not be any delays associated with the processing of these objections. With respect to objections related to other tax matters filed by individuals and businesses, the CRA is currently holding these accounts in abeyance. No collection action will be taken with respect to these accounts at this time.
- For any objection request due March 18 or later, the deadline is effectively extended until June 30, 2020.
- The CRA is holding any other objections related to other tax matters filed by individuals and businesses in abeyance.
- With respect to appeals before the Tax Court of Canada ("TCC") on March 16, 2020, the TCC has ordered the extension of all timelines prescribed by the rules of that Court while it is closed for business until March 30, 2020 (this has been extended to May 1, 2020).
- Where taxpayers wish to file an appeal in relation to CPP/EI rulings decisions, they are encouraged to do so through MyAccount to avoid potential delays.
- The CPP/EI appeals program is currently only actioning appeals that are related to cases where EI benefits are pending; these cases will be treated on a priority basis and all other appeals will be actioned when normal services resume. The CPP/EI Appeals to the Minister program will exercise discretion on a case by case basis when additional time is required to respond to a request.
- The CRA is extending the filing deadline to December 31, 2020 for all charities with a Form T3010, Registered Charity Information Return, due between March 18, 2020 and December 31, 2020.
- The CRA will not initiate contact with taxpayers for audits (with certain exceptions); this includes:
  - no new audits being launched, and
  - no requests for information related to existing audits.

  No audits should be finalized and no reassessments should be issued during that period.
- Collections activities on new debts will be suspended until further notice, and flexible payment arrangements will be available. Payment arrangements are also available on a case-by-case basis if you can't pay your taxes, child and family benefit overpayments, Canada Student Loans, or other government program overpayments in full.
- Banks and employers do not need to comply or remit on existing RTPs during this time.
- Taxpayers who are unable to file a return or make a payment by the tax-filing and payment deadlines because of COVID-19 can request the cancellation of penalty and interest charged to their account. Penalties and interest will not be charged if the new deadlines the government has announced for tax-filing and payments are met.
- In order to reduce the necessity for taxpayers and tax preparers to meet in person, the CRA will recognize electronic signatures as having met the signature requirements of the *Income Tax Act*, as a temporary administrative measure. This provision applies to authorization forms T183 or T183CORP.

Note that even if a taxpayer is unable to file a return or make a payment by the extended tax-filing and payment deadlines below because of COVID-19, they can send a request that the CRA cancel their penalties and interest.

COVID-19: Provincial Tax Update (March 27, 2020)

Alberta

The Alberta government is deferring the due date for corporate tax balances and instalment payments as part of the province's response to COVID-19. On March 18, 2020, the government said that it will defer the collection of corporate tax balances and instalment payments that fall due from March 18 until August 31, 2020.

British Columbia

On March 23, 2020, the British Columbia government announced the extension of tax filing and payment deadlines and delays to the implementation of planned new tax measures as part of the province's response to COVID-19.

The province will extend tax filing and payment deadlines for the provincial sales tax, municipal and regional district tax on short-term accommodation, tobacco tax, motor fuel tax, and carbon tax until September 30.

The scheduled April 1 increase to the provincial carbon tax, as well as the new PST registration requirements on e-commerce and the implementation of PST on sweetened carbonated drinks, will be delayed. Their timing will be reviewed by September 30.

Effective immediately, businesses with a payroll of over $500,000 can defer their employer health tax payments until September 30.

A new Emergency Benefit for Workers will provide a one-time, tax-free $1,000 payment to those who receive federal EI, or the new federal Emergency Response Benefit as a result of COVID-19. A one-time enhancement to the climate action tax credit will be paid in July 2020 to moderate- and low-income families.

Manitoba

Information Notice RST 20-03 announced a filing extension for RST returns. Returns for small and medium businesses with monthly RST remittances of no more than $10,000 per month that would normally be due on April 20th and May 20th will now be due on June 22, 2020. Businesses that file on a quarterly basis that have a due date of April 20, 2020 will now have the due date extended to June 22, 2020. Businesses that qualify for the filing extension that were unable to file and remit their February sales tax return by the March 20th due date will not be assessed a late filing penalty and interest will not be applied until after June 22, 2020. Interest will continue to apply on all outstanding tax debts established prior to the March remittance deadlines. Businesses will still receive paper returns in the mail or web notice reminders by email for return periods March and April.

Ontario

The Ontario government has announced a few tax measures in its March 2020 Economic and Fiscal Update, two of which relate to the COVID-19 situation.

Private-sector employers with remuneration in Ontario of less than $5 million are currently exempt from the employer health tax ("EHT") on up to $490,000 of their payroll. The government will increase this exemption to $1 million for 2020, and it will return to $490,000 beginning in 2021. This measure will provide EHT relief of up to $9,945 per eligible employer.

Beginning April 1, 2020 and ending on August 31, 2020, penalties and interest will not apply where a business fails to file a return for or remit selected types of provincially-administered taxes.

Saskatchewan

Taxpayers who are unable to remit their PST due to cashflow issues will have three-month relief from penalty and interest charges. Businesses that are unable to file their provincial tax return by the due date may submit a request for relief from penalty and interest charges on the return affected. The province has also suspended its audit program and compliance activities.

International COVID-19 Update

US Senate Passes ' Phase Three' COVID-19 Aid Package

On March 25, 2020, the United States Senate overwhelmingly approved the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which represents the third package of financial aid measures to businesses and individuals affected by the coronavirus crisis and which includes numerous tax provisions to support businesses.

Notable business tax provisions in the CARES Act include employee retention tax credits, modifications to the rules surrounding the use of losses, and a temporary relaxation of the limitation on business interest expenses. These and other measures, detailed in a report produced by the Committee on Finance, are summarized below:

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The provision provides a refundable payroll tax credit for 50 per cent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose operations were fully or partially suspended, due to a COVID-19-related shutdown order, or whose gross receipts declined by more than 50 per cent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to employees. For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first US$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Delay of Payment of Employer Payroll Taxes

The provision allows employers and self-employed individuals to defer payment of the employer share of the social security tax they otherwise are responsible for paying to the federal Government with respect to their employees. Employers generally are responsible for paying a 6.2 per cent social security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Modifications for Net Operating Losses

The provision relaxes the limitations on a company's use of losses. Net operating losses ("NOLs") are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that NOLs arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow a NOL to fully offset income (currently, taxpayers can use NOLs to offset up to 80 per cent of taxable income). These changes will allow companies to utilize losses and amend prior year returns.

Modification of Limitation on Losses for Taxpayers Other Than Corporations

The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations

The corporate alternative minimum tax ("AMT") was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of Limitation on Business Interest

The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30 per cent of earnings before interest, tax, depreciation, and amortization ("EBITDA") limitation to 50 per cent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Technical Amendment Regarding Qualified Improvement Property

The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

Temporary Exception From Excise Tax for Alcohol Used To Produce Hand Sanitizer

The provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

What Happens Next?

The CARES Act now proceeds to the House of Representatives, which is expected to approve the legislation in the coming days. It is likely to be signed into law by President Trump soon after the House vote.

US IRS Announces Light-Touch Enforcement Approach

On March 25, 2020, the United States Internal Revenue Service ("IRS") announced a comprehensive package of measures to assist taxpayers facing challenges as a result of the coronavirus crisis, including easing payment guidelines and postponing compliance actions.

Highlights of the key actions in the IRS "People First Initiative" include:

Existing Installment Agreements

For taxpayers under an existing Installment Agreement, payments due between April 1 and July 15, 2020 are suspended. Taxpayers who are currently unable to comply with the terms of an Installment Payment Agreement, including a Direct Deposit Installment Agreement, may suspend payments during this period if they prefer. Furthermore, the IRS will not default any Installment Agreements during this period. By law, interest will continue to accrue on any unpaid balances.

New Installment Agreements

The IRS reminds people unable to fully pay their federal taxes that they can resolve outstanding liabilities by entering into a monthly payment agreement with the IRS.

Offers in Compromise ("OIC")

The IRS is taking several steps to assist taxpayers in various stages of the OIC process:

- Pending OIC applications — The IRS will allow taxpayers until July 15 to provide requested additional information to support a pending OIC. In addition, the IRS will not close any pending OIC request before July 15, 2020 without the taxpayer's consent.
- OIC Payments — Taxpayers have the option of suspending all payments on accepted OICs until July 15, 2020, although by law interest will continue to accrue on any unpaid balances.
- Delinquent Return Filings — The IRS will not default an OIC for those taxpayers who are delinquent in filing their tax return for tax year 2018. However, taxpayers should file any delinquent 2018 return (and their 2019 return) on or before July 15, 2020.
- New OIC Applications — The IRS reminds people facing a liability exceeding their net worth that the OIC process is designed to resolve outstanding tax liabilities by providing a "Fresh Start."

Non-Filers

The IRS reminds people who have not filed their return for tax years before 2019 that they should file their delinquent returns. More than one million households that haven't filed tax returns during the last three years are actually owed refunds and still have time to claim these refunds.

The IRS said many taxpayers should consider contacting a tax professional to consider various available options since the time to receive such refunds is limited by statute. Once delinquent returns have been filed, taxpayers with a tax liability should consider taking the opportunity to resolve any outstanding liabilities by entering into an Installment Agreement or an Offer in Compromise with the IRS to obtain a "Fresh Start."

Field Collection Activities

Liens and levies (including any seizures of a personal residence) initiated by field revenue officers will be suspended during this period. However, field revenue officers will continue to pursue high-income non-filers and perform other similar activities where warranted.

Automated Liens and Levies

New automatic, systemic liens and levies will be suspended during this period.

Passport Certifications to the State Department

The IRS will suspend new certifications to the Department of State for taxpayers who are "seriously delinquent" during this period. These taxpayers are encouraged to submit a request for an Installment Agreement or, if applicable, an OIC during this period. Certification prevents taxpayers from receiving or renewing passports.

Private Debt Collection

New delinquent accounts will not be forwarded by the IRS to private collection agencies to work during this period.

Field, Office, and Correspondence Audits

During this period, the IRS will generally not start new field, office, and correspondence examinations. The IRS will continue to work refund claims where possible, without in-person contact. However, the IRS may start new examinations where deemed necessary to protect the government's interest in preserving the applicable statute of limitations.

In-Person Meetings

In-person meetings regarding current field, office, and correspondence examinations will be suspended. Even though IRS examiners will not hold in-person meetings, they will continue their examinations remotely where possible. To facilitate the progress of open examinations, taxpayers are encouraged to respond to any requests for information they already have received — or may receive — on all examination activity during this period if they are able to do so.

Unique Situations

Particularly for some corporate and business taxpayers, the IRS understands that there may be instances where the taxpayers desire to begin an examination while people and records are available and respective staffs have capacity. In those instances when it's in the best interest of both parties and appropriate personnel are available, the IRS may initiate activities to move forward with an examination, understanding that COVID-19 developments could later reduce activities for an agreed period.

General Requests for Information

In addition to compliance activities and examinations, the IRS encourages taxpayers to respond to any other IRS correspondence requesting additional information during this time if possible.

Earned Income Tax Credit and Wage Verification Reviews

Taxpayers have until July 15, 2020 to respond to the IRS to verify that they qualify for the Earned Income Tax Credit or to verify their income. These taxpayers are encouraged to exercise their best efforts to obtain and submit all requested information, and if unable to do so, to reach out to the IRS indicating the reason such information is not available. Until July 15, 2020, the IRS will not deny these credits for a failure to provide requested information.

Independent Office of Appeals

Appeals employees will continue to work their cases. Although Appeals is not currently holding in-person conferences with taxpayers, conferences may be held over the telephone or by videoconference. Taxpayers are encouraged to promptly respond to any outstanding requests for information for all cases in the Independent Office of Appeals.

Statute of Limitations

The IRS will continue to take steps where necessary to protect all applicable statutes of limitations. In instances where statute expirations might be jeopardized during this period, taxpayers are encouraged to cooperate in extending such statutes. Otherwise, the IRS will issue Notices of Deficiency and pursue other similar actions to protect the interests of the government in preserving such statutes. Where a statutory period is not set to expire during 2020, the IRS is unlikely to pursue the foregoing actions until at least July 15, 2020.

Practitioner Priority Service

The IRS has reminded practitioners that, depending on staffing levels and allocations going forward, there may be more significant wait times for the PPS. The IRS said it will continue to monitor this as situations develop.

United States Rolls Out COVID-19 Response Tax Package

On March 20, 2020, the United States Treasury Department, the Internal Revenue Service, and the Department of Labor announced that small and medium-sized businesses ("SMEs") can begin taking advantage of two new refundable payroll tax credits under the newly enacted Families First Coronavirus Response Act (the "Act").

The new legislation, signed by President Trump on March 18, 2020, is designed to immediately and fully reimburse SMEs, dollar-for-dollar, for the cost of providing coronavirus-related leave to their employees. It applies to businesses with fewer than 500 employees.

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will bereleased soon.

Eligible employers will be able to claim these credits based on qualifying leave they provide between the effective date and December 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

Paid Leave

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100 per cent of the employee's pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, a child whose school is closed or whose child care provider is unavailable for reasons related to COVID-19, and/or who is experiencing substantially similar conditions as specified by the US Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's pay.

An employee who is unable to work due to a need to care for a child whose school is closed or whose child care provider is unavailable for reasons related to COVID-19 may in some instances receive up to an additional ten weeks of expanded paid family and medical leave at two-thirds the employee's pay.

Paid Sick Leave Credit

For an employee who is unable to work because of coronavirus quarantine or self-quarantine or who has coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to US$511 per day and US$5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with coronavirus, or who is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to US$200 per day and US$2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Child Care Leave Credit

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at US$200 per day or US$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the childcare leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Payment for the Cost of Providing Leave

Normally, when employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns with the IRS.

Under guidance that will be released shortly, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.

Small Business Exemption

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The Labor Department will provide emergency guidance and rulemaking to clearly articulate this exemption shortly.

Non-Enforcement Period

The Labor Department will be issuing a temporary non-enforcement policy that provides a grace period for employers to come into compliance with the Act. Under this policy, the Labor Department will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. The Labor Department will instead focus on compliance assistance during the 30-day period.

US Taxpayers Allowed Longer To File Due To COVID-19

On March 21, 2020, the United States Treasury Department and the Internal Revenue Service announced that the federal income tax filing due date is automatically extended from April 15, 2020 to July 15, 2020, and that taxpayers can also defer federal income tax payments due on April 15, 2020 to July 15, 2020 without penalties and interest, regardless of the amount owed.

The IRS said that this deferment applies to all taxpayers, including individuals, trusts and estates, corporations, and other non-corporate tax filers, as well as those who pay self-employment tax.

Taxpayers do not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief, the IRS confirmed. However, individual taxpayers who need additional time to file, beyond the July 15 deadline, can request a filing extension by filing Form 4868. Businesses who need additional time must file Form 7004.

Most tax refunds are still being issued within 21 days, the IRS said.

Prior to this, the IRS's coronavirus relief measures extended only the tax payment deadline to July 15 for tax payments up to US$1 million for individuals and up to US$10 million for corporations.

The agency said that it will continue to monitor issues related to the COVID-19 virus, and updated information will be posted on the IRS's special coronavirus webpage.

RECENT INCOME TAX INTERPRETATIONS

Gift by Life Interest Trust

The Canada Revenue Agency ("CRA") was asked if the "total gifts" (as defined in subsection 118.1(1) of the *Income Tax Act* (the "Act")) of a trust for a year in which the trust beneficiary dies include the eligible amount of a gift of capital property which was made in the year immediately following the year of death. In this case, the trust is deemed to have sold the trust capital property for proceeds equal to the fair market value of the property at the end of the day, and to have reacquired it immediately on the following day for the same amount. Note that the trust's taxation year ends on the date of death and a new taxation year begins on the following day. In other words, the CRA was asked if the "total gifts" for the year of death would include the eligible amount of the capital property donated in the taxation year after the year of death.

The CRA confirmed that the eligible amount of a gift of capital property would be included because variable B of the definition of "total gifts" refers to an individual's taxable capital gain for the taxation year in respect of the gift made by him or her in the taxation year. An eligible amount is also included in his or her "total charitable gifts" (as defined in subsection 118.1(1) of the Act) for the taxation year respecting the previously mentioned gift. The CRA noted that its opinion did not apply to a taxable capital gain resulting from the deemed disposition of a property by a trust if it arose from the death of a trust beneficiary.

— January 27, 2020 External Technical Interpretation, Financial Industries and Trusts Division, 2019-0799641E5

Deductibility of Arrears of Child Support Payments

The Canada Revenue Agency ("CRA") was asked if child support payments that were required under a court order, that were made before May 1997, and that had fallen into arrears would remain tax deductible if subsequently paid after the "commencement day", as this term is defined in subsection 56.1(4) of the *Income Tax Act* (the "Act"). In this case, the payments were made weekly and were originally tax deductible to the payor, but the spouses signed Form T1157 to make the payments non-taxable and non-deductible.

The CRA responded that the question of whether the payments would remain tax deductible depended on the following:

- If those arrears payments refer to a settlement of the arrears for an amount inferior to the periodic amounts that fell into arrears, the settlement payments would not be tax deductible.
- On the other hand, if those arrears payments refer to the actual periodic amounts which fell into arrears, the payment of arrears payable before the "commencement day", as defined in subsection 56.1(4) of the Act, would be tax deductible.

— September 24, 2019 Internal Technical Interpretation, Business and Employment Division, 2019-0820431I7

Taxation of Employment Income Earned by Status Indian

The Canada Revenue Agency ("CRA") was asked to consider the following situation:

- A was registered as an Indian under the *Indian Act*, and did not live on a reserve.
- A was employed by a school board to teach a program to First Nation students.
- The school board and schools where the teaching took place were not located on a reserve, but were located in close proximity to a reserve.
- The First Nation provided all of the funding, either directly or indirectly, to the school board for the services of a teacher to teach the program to on-reserve First Nation students.

The CRA was asked if the employment income that A earned by teaching the program to the First Nation students was considered situated on a reserve and therefore exempt from Canadian income tax under paragraph 81(1)(*a*) of the *Income Tax Act* and section 87 of the *Indian Act*. More specifically, the CRA was asked if guideline 4 of the *Indian Act employment income guidelines* developed by the CRA and certain First Nations could apply in this situation.

The CRA confirmed that guideline 4 could not apply in this situation because the employer (i.e., the school board) did not reside on the reserve, was not an Indian band or tribal council, and was not an Indian organization controlled by a band or council. However, the CRA still considered that A's employment income could be considered situated on the reserve and therefore exempt from income tax for the following reasons:

- the purpose of the program was to develop the skills of on-reserve Indian students;
- the First Nation and a corporation had a significant degree of control over the program, the agreement with the teacher, and the funding of the program (including determining the hiring panel for the teacher, monitoring the effectiveness of the program, and identifying the on-reserve First Nation students allowed to register in the program); and
- the First Nation provided the funding for the program and the teacher who is responsible for liaising with the parents of the students and the Director of Education of the First Nation.

— External Technical Interpretation, Business and Employment Division, September 9, 2020, 2018-0784991E5

Safe Income Allocation to Dividends Received by Discretionary Trust

The Canada Revenue Agency ("CRA") was asked to consider the following situation:

- A corporation ("Holdco") and an individual ("A") are the sole beneficiaries of a discretionary trust (the "Trust"), which held Opco shares that had been issued as a result of an estate freeze.
- The safe income associated with the Opco shares is $1,000.
- Opco pays a dividend of $2,500 to the Trust.
- The Trust makes a designation under subsection 104(19) of the *Income Tax Act* (the "Act") and, as a result, Holdco is deemed to receive a $1,000 dividend, and A is deemed to receive a $1,500 dividend.

The CRA was asked if a trust receiving a dividend from Opco, only partially supported by its safe income ($1,000 safe income for $2,500 dividend), and then allocating the dividend to a corporate and an individual beneficiary could use its discretion to allocate the whole $1,000 safe income to the dividend allocated to Holdco and none to the dividend allocated to A. In other words, could the whole $1,000 dividend received by Holdco be eliminated by Opco's $1,000 safe income.

The CRA confirmed that the trustees would not have the discretion to allocate the safe income to different portions of the dividends paid to the trust beneficiaries under a designation made under subsection 104(19) of the Act. The safe income allocation must be made as follows on a pro-rata basis:

- Safe income allocated to corporation, Holdco: $400 (i.e., $1,000 x $1,000 / $2,500).
- Safe income allocated to individual, A: $600 (i.e., $1,000 x $1,500 / $2,500).

The designation in subsection 104(19) of the Act only provides that a trust beneficiary is deemed to have received a taxable dividend that would have otherwise been received by the trust. The trustees do not have the discretion to allocate all of the safe income associated with the dividend to one of the trust beneficiaries and none of it to other beneficiaries.

— *External Technical Interpretation, Reorganizations Division, January 27, 2020, 2019-0833061E5*

Tax-Free Rollover of RRSP Refund of Premium — Charitable Gift Annuity

The Canada Revenue Agency ("CRA") was asked if it would reconsider Technical Interpretation No. 2018-0758611E5, in which they stated that a charitable gift annuity issued by a registered charity did not qualify for the tax-free rollover under paragraph 60(*l*) of the *Income Tax Act* (the "Act"). The CRA would not change its opinion since the condition described in subparagraph 60(*l*)(ii) of the Act would not be met. Even if the provincial insurance law exempts a charity from the application of certain legislative requirements to the issuance of a charitable gift annuity, this did not mean that the charity was licensed or otherwise authorized under the laws of Canada or a province to carry on an annuities business in Canada, as it is required to be under subparagraph 60(*l*)(ii) of the Act. Therefore, the conclusions expressed in Technical Interpretation No. 2018-0758611E5 are still valid.

— *External Technical Interpretation, Financial Industries and Trusts Division, January 23, 2020, 2019-0830781E5*

Home Buyers' Plan — Disabled Person

The situation considered by the Canada Revenue Agency ("CRA") involved a taxpayer whose daughter was entitled to claim the disability tax credit, and who wished to withdraw funds from his own registered retirement saving plan ("RRSP") under the home buyers' plan ("HBP") to purchase a home located in a district where there was a school offering a special program suitable for his daughter's educational needs. Since the taxpayer's spouse owned a home in an area where there was no such school, they moved to a temporary rental accommodation in the district where the school with the special program was located, but wanted to withdraw funds under the HBP program to buy a house in the district. The CRA was asked if the taxpayer could make that HBP withdrawal.

The CRA confirmed that the question of whether the taxpayer would be eligible for the HBP withdrawal (i.e., whether the withdrawal would be a "supplemental eligible amount", as this term is defined in subsection 146.01(1) of the *Income Tax Act* (the "Act")) was one of fact. However, the CRA agreed that the purchase of the new home in this situation would meet the requirement that the home was acquired to enable the related person with a disability (i.e., the daughter) to live in an environment better suited to her personal needs and care. In this situation, the taxpayer did not need to be a first-time home buyer.

— External Technical Interpretation, Financial Industries and Trusts Division, January 30, 2020, 2019-0819671E5

Loss Carryback to First Taxation Year of Trust

The situation the Canada Revenue Agency ("CRA") was asked to consider involved an alter ego or joint spousal trust subject to the application of paragraph 104(13.4)(*a*) of the *Income Tax Act* (the "Act"), where the trust has two taxation years in the same calendar year (i.e., one starting January 1 of the year of death and ending on the date of death, and one starting on the day following the date of death and ending on December 31 of the year of death). The trust realized a capital gain in the first of those taxation years and a capital loss in the second of those taxation years. The CRA was asked two questions:

(1) What is the right method to make sure the capital loss is applied in the first taxation year?

(2) Will some arrears of interest be charged respecting the tax payable in the first taxation year if the net capital loss carryback ("LCB") is at least equal to the taxable capital gain realized in the first taxation year?

Regarding the first question, the CRA noted that the capital loss realized in the second taxation year would have to be reported in the T3 return for that year, and the LCB request would have to be made by filing Form T3A. The T3A would have to be filed on or before the "balance-due day" (as defined in subsection 248(1) of the Act) of the first taxation year. The due date of the T3 return and the "balance-due day" for the first taxation year are extended by paragraph 104(13.4)(*c*) of the Act to 90 days after the end of the calendar year in which the taxation year ends.

Regarding the second question, the CRA confirmed that the LCB request would not be processed before the assessment notice of the first taxation year had been issued. If the tax payable on the trust return for the first taxation year is not paid by the "balance-due day", the assessment notice would include arrears of interest. However, if the LCB request is filed on or before the "balance-due day" of the first taxation year and the net capital loss is at least equal to the taxable capital gain in the first taxation year, the arrears of interest on the assessment notice would be reversed. In other words, the application of the LCB would result in no tax payable on the "balance-due day" of the first taxation year and, therefore, arrears of interest would not apply.

— CTF Annual Conference, CRA Roundtable – Question 15, December 3, 2019, 2019-0824501C6

Eligible Dividend Designation

The Canada Revenue Agency ("CRA") was asked if it would extend to Canadian-controlled private corporations ("CCPCs") the administrative relief currently enjoyed by public corporations concerning the information of their shareholders on the declaration of an eligible dividend. To be considered an eligible dividend, the corporation paying the dividend is required under subsection 89(14) of the *Income Tax Act* (the "Act") to designate it as eligible in a written notification sent to the recipient at the time it is paid. To alleviate the amount of work for a public corporation, it is allowed to post on its website a statement that "all dividends are eligible dividends unless indicated otherwise". It may also include a notice in its annual or quarterly report that an eligible dividend has been paid. The CRA was asked if a CCPC could meet the subsection 89(14) requirement by sending a written notice in advance to shareholders that all dividends are eligible dividends unless otherwise indicated.

The CRA confirmed that it would not extend the same administrative relief to CCPCs as the one offered to public corporations since the factors allowing a public corporation to declare an eligible dividend are not applicable to a CCPC. Because most public corporations do not have a low-rate income pool ("LRIP") to pay non-eligible dividends, all dividends received from a public corporation are generally eligible dividends. The situation is different for CCPCs that have two types of income pools: (1) LRIP generally composed of income subject to the lower small business tax rate; and (2) general rate income pool ("GRIP") generally composed of income subject to the higher general tax rate. Therefore, the CRA considered that its reasons for refusing to extend the administrative relief to CCPCs were still valid and reasonable under the circumstances. For more information on this subject, see technical interpretations 2008-0300381C6 and 2009-0347491C6.

— CTF Annual Conference, CRA Roundtable – Question 10, December 3, 2019, 2019-0824471C6

TCP Distributed by Discretionary Family Trust to Canadian Corporation

The Canada Revenue Agency ("CRA") was asked to consider the following transaction for the purpose of determining whether the trust could avoid the application of the deemed disposition rule in subsection 107(5) of the *Income Tax Act* (the "Act"):

- The trustees of a Canadian resident discretionary trust plan to distribute the trust property to their beneficiaries in advance of the trust's 21st anniversary.
- The property is a "taxable Canadian property" ("TCP"), as this term is defined in subsection 248(1) of the Act, but is not one described in subparagraphs 128.1(4)(b)(i) to (iii) or a share of the capital stock of a non-resident-owned investment corporation.
- The trust beneficiaries are non-resident individuals.
- The trustees will distribute the TCP on a tax-deferred basis (under subsection 107(2) of the Act) to a Canadian corporation wholly owned by the non-resident beneficiaries.

The CRA confirmed that the transaction would constitute a misuse or an abuse of subsections 107(2), (2.1), and (5) of the Act for the purpose of circumventing the application of the deemed disposition rule in subsections 107(2.1) and (5). The purpose of those latter provisions is to make sure that there is an immediate realization of a capital gain on the distribution of TCP to non-residents whom Canada has no absolute right to tax. The purpose is also to permit Canada to tax a capital gain which accrued during a period when the property was held by a Canadian resident trust.

The CRA added that it would consider the application of the general anti-avoidance rule, and would refuse to issue an advance income tax ruling for the above transaction.

— *CTF Annual Conference, CRA Roundtable – Question 6, December 3, 2019, 2019-0823581C6*

Deduction of In-Kind Contributions Made to a Non-Profit Organization

The situation reviewed by the Canada Revenue Agency ("CRA") involved a non-profit organization ("NPO") carrying on a project and soliciting in-kind contributions of goods and services from suppliers in the local community to help them achieve their project. The suppliers would benefit from word-of-mouth advertising and promotion, resulting in increased income from their involvement in the project. The CRA was asked if the suppliers could deduct the in-kind contributions from their income.

The CRA confirmed that an in-kind contribution made by a supplier to the NPO is only deductible as a business expense if that supplier carries on a business as determined in CRA Guide T4002, and if the supplier made the contribution to earn business income from the previously-mentioned business. Only a careful review of the facts would determine if those two conditions were met. If the contribution is viewed as an expense that is capital in nature, not reasonable, or not incurred while earning business income, the contribution would not be deductible for tax purposes. Note that the transaction could be viewed as a barter transaction where the NPO receives goods or services from the supplier in exchange for advertising and promotional services provided to the supplier. A supplier providing services to the NPO would have to include the value of the services in its income, but would then be able to deduct from its business not only the value of the advertising and promotion received but also the cost of the goods or services incurred in providing those services to the NPO.

— *External Technical Interpretation, Business and Employment Division, January 6, 2020, 2019-0800941E5*

CURRENT ITEMS OF INTEREST

Ontario Economic and Fiscal Update

The Ontario government announced a few tax measures in its March 2020 Economic and Fiscal Update, one of which was not specifically COVID-19 related. The government proposes to introduce a new regional opportunities investment tax credit. A Canadian-controlled private corporation that makes a qualifying capital investment in a specified region of Ontario will be eligible for a 10% refundable tax credit. Qualifying investments include capital property that is included in CCA Classes 1 or 6, which primarily include buildings. The credit is available for investments in excess of $50,000 and not exceeding $500,000. The credit is available for investments that become available for use on or after March 25, 2020. The credit must also be reviewed by the government every three years.

RECENT CASES

Parts 1 and 2 of Alberta Greenhouse Gas Pollution Pricing Act unconstitutional in their entirety

The *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12 (the "Act"), mandates minimum national standards for pricing of commodities and activities that produce greenhouse gas ("GHG") emissions. On a constitutional reference to the Alberta Court of Appeal, Canada defended the constitutionality of the Act on the sole basis that it falls within the national concern doctrine of Parliament's peace, order, and good government power in subsection 91 of the *Constitution Act, 1867* (the "1867 Act").

Canada's argument was untenable. The regulation of GHG emissions does not fall under any head of power assigned to Parliament by the 1867 Act. Rather such regulation falls within heads of powers assigned to the provinces under sections 92A, 92(2), 92(10), 92(13), and 109 of the *Constitution Act, 1982*. The Act therefore was a constitutional Trojan horse, inasmuch as it contemplated a wholesale takeover of a collection of clear provincial jurisdictions and rights. To hold otherwise would be to subject almost every aspect of the provinces' development and management of their natural resources to federal regulation to reduce GHG emissions. Parts 1 and 2 of the Act, therefore, were found to be unconstitutional.

¶50,469, *Greenhouse Gas Pollution Pricing Act (Re)*, 2020 DTC 5025

Payments made by taxpayer under forward hedging contract capital in nature, and thus not deductible on income account

When his brokerage firm was acquired in 1988 by the Bank of Nova Scotia (the "BNS"), the taxpayer M became the owner of 183,333 common shares of the BNS. After he left the BNS, M was offered a credit facility by the Toronto-Dominion Bank (the "TD Bank") but was required by the TD Bank to pledge 165,000 BNS shares as partial security for that credit facility (the "Reference Assets"). In addition, the credit available to him under the credit facility was not to exceed 95% of the value of the Reference Assets. As a result, M was required to enter into a "forward contract" with TD Securities Inc., which was to be cash settled through payments known as "Cash Settlement Payments". These had the effect of correspondingly reducing the number of shares included under the forward contract. In computing his income for 2004, 2005, and 2006, M took the position that he had been using the forward contract for speculation, not hedging. As a result he deducted, as income losses deductible against income from other sources, the Cash Settlement Payments made by him under the forward contract. On reassessment, the Minister characterized the Cash Settlement Payments as capital losses that were not deductible on income account, but only against capital gains, on the ground that the forward contract was a hedge of the BNS shares that M was holding on account of capital. In allowing M's appeal (2018 DTC 1044), the Tax Court of Canada concluded, in essence, that the forward contract was a speculative instrument, so that the Cash Settlement Payments were properly characterized as losses on account of income. In allowing the Crown's appeal (2018 DTC 5077), the Federal Court of Appeal concluded unanimously that the forward contract was a hedge of M's BNS shares, so that the Cash Settlement Payments gave rise to capital losses. M appealed to the Supreme Court of Canada.

M's appeal was dismissed. A forward contract is an agreement for the purchase/sale of an asset at an agreed future date. More technically, it is a type of derivative contract that creates an obligation for one party to sell and another party to buy an underlying asset (the "Reference Asset") at a pre-determined future date and at a pre-determined price (see *Ontario (Minister of Finance v. Placer Dome Canada Ltd)*, 2006 DTC 6532 (SCC)). The income tax treatment of gains and losses arising from derivative contracts depends on whether the derivative contract is characterized as a hedge or a speculation. In addition, gains and losses arising from hedging derivative contracts take on the character of the underlying asset, liability, or transaction being hedged (see *Shell Canada Ltd. v. Canada*, 99 DTC 5669 (SCC)). A long line of jurisprudence supports the conclusion that the characterization of a derivative contract as a hedge turns on the contract's purpose, and purpose is ascertained objectively (see *Ludco Enterprises Ltd. v. Canada*, 2001 DTC 5505 (SCC)). While subjective manifestations of purpose may sometimes be relevant, the taxpayer's stated intention, as Noel CJ of the Federal Court of Appeal pointed out, is not determinative in this context. In addition, the case law demonstrates that the characterization of a derivative contract as a hedge turns on its purpose. Furthermore, the primary source for ascertaining a derivative contract's purpose is the extent of the linkage between the derivative contract and an underlying asset. In this case the substantial linkage between the forward contract and M's BNS shares fully supported Noel, CJ's conclusion that this contract was a hedge. It had the effect, moreover, of nearly perfectly neutralizing fluctuations in the price of the BNS shares being held by M, pointing to a close linkage. The foregoing analysis led to the conclusion that the purpose of M's forward contract was to hedge against market price fluctuations in his BNS shares. As a result the Cash Settlement Payments under the forward contract gave rise to capital losses as the Minister had contended.

¶50,465, *MacDonald v. The Queen*, 2020 DTC 5027

Taxpayer's alleged business not a source of income; business expense deductions claimed by taxpayer disallowed accordingly

The taxpayer, a retired concert violinist, alleged that, during 2013 and 2014, he carried on two separate businesses, involving photography and string-quartet endeavours. The Minister disallowed business expense deductions claimed by the taxpayer for both of those businesses, on the ground that neither one constituted a source of income. At the hearing of his appeal to the Tax Court of Canada, the taxpayer abandoned his claim relating to the string-quartet endeavours, and the Minister alleged, in part, that the photographic endeavour involved a personal element with no business plan.

The taxpayer's appeal was dismissed. A review of the leading case of *Stewart v. Canada*, 2002 DTC 6969 (SCC), led to the conclusions, in essence, that: (a) the relevant factors to consider in analyzing the taxpayer's photography endeavour were the history of profit and loss, the taxpayer's training and education, his intended course of action, and his capability of showing a profit; (b) the taxpayer produced virtually no business records; and (c) he did not carry out his photography endeavour in a sufficiently commercial manner to justify the business expense deductions claimed. The Minister's reassessments were affirmed accordingly.

¶50,467, *Hurwitz v. The Queen*, 2020 DTC 1028

Taxpayer, a judge, not entitled to deduct legal costs incurred in declaratory proceedings seeking to impugn constitutionality of Act Respecting Municipal Courts

The taxpayer was a retired municipal court judge. He incurred legal expenses (the "Legal Costs") in an unsuccessful attempt to obtain from the Quebec Superior Court a judgment declaring that section 39 of the *Act Respecting Municipal Courts* is *ultra vires* (that section mandates the retirement of Municipal Court judges at age 70). On reassessment the Minister disallowed the taxpayer's attempt to deduct the "Legal Costs" incurred during 2015 in seeking to obtain the declaratory judgment from the Superior Court. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. No salary was owed to the taxpayer when he instituted the declaratory proceedings in the Superior Court. As a result, the Legal Costs were not deductible under paragraph 8(1)(*b*) of the Act, since they were not "incurred to collect, or to establish a right to collect an amount owed to the taxpayer that, if received by the taxpayer", would be included in his income from employment. The Minister's reassessment was affirmed accordingly.

¶50,468, *Clément c. La Reine*, 2020 DTC 1029

Corporation owing tax paid corporate taxpayer a dividend; parties not at arm's length and dividend not supported by consideration; taxpayer liable for tax owing by corporation that paid dividend

CG was the sole director and the directing mind behind both 0699 and the corporate taxpayer. The taxpayer owned all of the shares of 0699. On June 20, 2006, during its 2006 taxation year, 0699 paid the taxpayer a $600,00 dividend (the "Dividend"). As at June 30, 2015, 0699 owed tax for its 2006 taxation year. The Minister therefore assessed the taxpayer on June 30, 2015, for this tax under the transferor-transferee joint liability rules in section 160 of the Act. On its appeal to the Tax Court of Canada the taxpayer argued that, although the Dividend constituted a transfer, that transfer was supported by fair market value consideration in the form of a $600,000 loan made by the taxpayer to 0699 on or about June 2006 (the "Loan").

The taxpayer's appeal was dismissed. CG controlled both the taxpayer and 0699 and hence both were deemed under subsection 251(1) of the Act not to be dealing with each other at arm's length. Also, a review of the relevant documentation disclosed no connection between the Dividend and the Loan, each of which was a separate transaction. Furthermore no prudent arm's-length person would pay a $600,000 dividend for the opportunity to take out a $600,000 loan. The Dividend, therefore, was not supported by fair market value consideration. The Minister's assessment was affirmed accordingly.

¶50,463, *Gentile Holdings Ltd. v. The Queen*, 2020 DTC 1026

Minister ordered to answer six questions asked by corporate taxpayer during discoveries

The corporate taxpayer appealed to the Tax Court of Canada from the Minister's GAAR assessments. The sole issue was whether the taxpayer's use of certain tax attributes constituted abuse of the streaming rules in subsections 37(6.1), 111(5), and 127(9.1) of the *Income Tax Act* (the "Act"), or of paragraph 256(7)(*b*) of the Act. The taxpayer was seeking to challenge the "policy" underlying the streaming rules. During the course of discoveries the Minister refused to answer six questions by the taxpayer on the grounds that they were irrelevant and constituted a fishing expedition. The taxpayer applied for an order directing the Minister to answer the six questions.

The taxpayer's application was granted. The threshold for relevancy in respect of questions asked on discovery is relatively low (see *Teelucksingh v. R*, 2010 DTC 1085 (TCC)). Each of the questions in issue in the present proceedings constituted focused requests for one document, and were not fishing expeditions. As a result the Minister was ordered to answer all six questions within 45 days.

¶50,462, *CHR Investment v. The Queen*, 2020 DTC 1025

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