CANADIAN TAX *focus*

Editor: Alan Macnaughton, University of Waterloo
(amacnaug@uwaterloo.ca)

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Taxing TFSAs That Carry On a Securities Trading Business

Subsection 146.2(6) provides that if a TFSA "carries on one or more businesses," then "tax is payable under this Part [part I] by the trust on the amount that would be its taxable income for the taxation year if it had no incomes or losses from sources other than those businesses." This provision, little noticed until recently, has been the basis for a wave of CRA reassessments and a TI (2014-05382211C6, October 10, 2014) (available only in French). The impact on holders of such TFSAs may be exacerbated by the actions of financial institutions.

In the TI, the CRA confirmed its position that "speculative transactions" (unofficial translation) carried on by an RRSP, RRIF, or TFSA may amount to the operation of a business by the deferred plan, resulting in the income from such business being subject to income tax. The CRA has yet to publish guidelines on what is meant by "carrying on business" in relation to these kinds of plans, but the factors used in recent TFSA audits appear to be the same as those listed in paragraph 11 of *Interpretation Bulletin* IT-479R ("Transactions in Securities," February 29, 1984): frequency of transactions, period of ownership, knowledge of securities markets, security transactions forming a part of the taxpayer's ordinary business, time spent, advertising, and the speculative nature of the securities involved. The CRA's audit project does not appear to be restricted to TFSAs engaged in day trading.

In *Prochuk v. The Queen* (2014 TCC 17), the taxpayer supported himself for years on withdrawals from his RRSP, in which he regularly traded with apparent success. In 2007, he realized a significant loss on an investment outside his RRSP. In attempting to deduct his loss on income account, the taxpayer argued that the trading conducted in his RRSP should be considered because it would provide evidence that he was in the business of trading. The CRA argued that trading securities in an RRSP is not carrying on a business, citing *Deep v. The Queen* (2006 TCC 315). D'Auray J agreed that trading in an RRSP does not amount to carrying on a business and noted at paragraph 52 that the fact that the taxpayer had earned his livelihood by trading securities in his RRSP "is consistent with why Parliament created RRSP[s], namely to assist individuals in saving and earning money for retirement." This decision runs counter to the CRA's position in its current audit project on TFSAs. However, as stated in the TI, the CRA appears to be limiting the case to its particular facts.

Will financial institutions suspend withdrawals from TFSAs affected by this CRA action? Financial institutions might see such a strategy as a way to avoid the possibility that they would be liable for any such tax that cannot be paid out of the TFSA's available funds. A July 3, 2014 letter from the Investment Industry Association of Canada to the Department of Finance and the CRA notes that TI 2011-040553E5 (September 22, 2011) does not provide assurance that TFSA issuers will not be liable for the tax

IN THIS ISSUE

Taxing TFSAs That Carry On a Securities Trading Business	1
Ontario WSIB's Analogue to CRA's Voluntary Disclosure	2
Remitting the GST for Supplies Under Warranty	3
Remise de la TPS pour des fournitures sous garantie	3
Placement Agencies: The Risk in Not Making Source Deductions	4
Agences de placement : Le risque de ne pas effectuer de retenues à la source	5
If GAAR Applies, When Does Interest Start To Accrue?	6
Si la RGAE s'applique, quand les intérêts commencent-ils à courir?	6
No Forex Gain on Conversion of USD-Denominated Debentures	7
CRA and CPA Canada Establish Framework Agreement and Consultative Committees	8
British Columbia Natural Gas Tax Credit	9
Estate Plans Involving Trusts Require Review	9
De Facto Control Broadened: More Than a Board of Directors Test	10
CRA's Proposed Registration of Tax Preparers: A Summary of the Issues	11
Incomplete Address: Notice of Assessment Not "Mailed"	12
OECD Recommendations for Collecting Sales Tax on E-Commerce	13
Supreme Court Docket Update	14
Dossiers portés en appel devant la Cour suprême — mise à jour	14

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liabilities of TFSAs pursuant to subsection 104(1) and subsections 159(2) and (3). This TI is contrasted with the CRA's assurance to RRSP issuers in TI 2011-04023917 that "subsection[s] 159(2) and (3) do not generally apply as against the trustee of an RRSP."

Interestingly, legislation involving accounts similar to TFSAs in other countries renders income from carrying on a business taxable. In the United States, the analogous account is the Roth individual retirement account, for which income earned from an unrelated business is not exempted (see Code sections 408(e)(1), 511(a)(1), and 511(b)(1) and (2)). In the United Kingdom, the analogous account is the individual savings account, for which income from carrying on a business is not exempted (see section 22 of the Individual Savings Account Regulations 1998). However, we understand that neither the US nor the UK tax authorities have adopted an interpretation similar to the CRA's position on the taxation of TFSAs trading in securities.

Lauchlin MacEachern and Tim Clarke
Moodys Gartner Tax Law LLP, Calgary
lmaceachern@moodysgartner.com
tclarke@moodysgartner.com

Ontario WSIB's Analogue to CRA's Voluntary Disclosure

Employers who have not fulfilled their obligations to register under Ontario's Workplace Safety and Insurance Act, 1997 (WSIA) have a potential remedy of voluntary registration. This system is similar to the CRA's voluntary disclosure program, but is more financially generous; no more than a year's worth of unpaid premiums is payable retroactively, while the CRA has no limitation period on tax owing if the conditions for going beyond the normal reassessment period are met (ITA subsection 152(4) and TI 2011-0401921C6, June 3, 2011).

WSIA section 75(1) and Ontario regulation 175/98 establish two categories of industries to which mandatory Workplace Safety and Insurance Board (WSIB) coverage applies—schedule 1 and schedule 2. Schedule 1 employers pay WSIB premiums and are subject to the collective liability provisions of the WSIA. Schedule 2 employers are self-insured and pay the full amount of their WSIB claim costs plus an administrative fee. Schedule 1 employers include offices of professional accountants; forest products, mining, and related industries; other primary industries; manufacturing; transportation and storage; retail and wholesale trades; construction; government and related services; and other services (including employers that supply labour, restaurants, and hospitality). Schedule 2 employers include railways, airlines, provincial governments, municipalities, Crown corporations, and federally licensed telephone companies. More than 100 industries are omitted from mandatory coverage, including financial institutions, law firms, and doctors' and dentists' offices. For a corporation, the penalty under WSIA sections 151(1) and 158(1) for failing to comply with mandatory registration is up to $100,000; for an individual, the penalty is up to $25,000, up to six months' imprisonment, or both. The penalties apply to both schedule 1 and schedule 2 employers.

An employer that has not registered with the WSIB but is required to do so because it is in an industry listed in schedule 1 or 2 may be eligible for the WSIB's voluntary registration policy. (Note the confusing terminology: some employers that are not required to register may nevertheless do so, but such registrations are "optional insurance," not voluntary registrations.) The current version of this policy is set out in WSIB operational policy document 14-02-15 and is described in a supplementary administrative practice document. The policy is effective February 1, 2014, with no expiry date (although it is to be reviewed after five years). Upon an employer's successful voluntary registration, the WSIB may waive penalties; refrain from investigating and prosecuting; and require the payment of no more than 12 months of retroactive premiums (through starting premiums with the effective date of registration—the later of the date of the first employee hire and 12 months prior to the month of voluntary disclosure). The use of the word "may" in the list of types of relief implies that there is no guarantee of the relief that will be provided. A schedule 2 employer's gain from the policy is only the waiver of penalties and prosecution, since premiums are not applicable.

The statutory authority for the policy is somewhat unclear. Although the policy lists various subsections of the WSIA, none of these provisions provide the same clear authority for administrative discretion afforded in ITA subsection 220(3.1).

Voluntary registration is required to be complete (that is, the application provides the same information that would be required for a normal registration), accurate, and voluntary. Specifically, the WSIB registration will not be considered voluntary if the WSIB has identified the employer's failure to register through the WSIB's own actions (such as audits and classification reviews); the information exchange agreement between the WSIB and the CRA; anonymous telephone calls to the WSIB; and claims submitted to the WSIB by workers. The policy does not offer a no-names option; thus,

the non-complying employer cannot determine the precise implications of coming forward without identifying itself.

Voluntary registration applies only to employers registering for the first time. Therefore, it does not apply to an employer with one or more existing accounts (such as a manufacturing company that has WSIB accounts for each plant, but has failed to register for some plants). It also does not apply to an employer that has had a WSIB account in the past and is seeking to reactivate it.

Jamie Herman
Fruitman Kates LLP, Toronto
jamieh@fruitman.ca

Remitting the GST for Supplies Under Warranty

When should automobile mechanics and dealerships that honour a manufacturer's warranty remit the GST payable on repairs warranted by the manufacturer—when they send a claim for a refund to the manufacturer, or when the manufacturer pays the claim? The decision in *Garage Gilles Roy (2007) inc. c. La Reine* (2014 CCI 269) supports the latter choice. This decision may have application to warranty repairs beyond the automobile industry.

The dispute concerned the application of sections 168 and 152 of the ETA (the equivalent of sections 82 and 83 of the Act Respecting the Québec Sales Tax) to repairs carried out by the taxpayer (GGR) that were covered under the manufacturer's warranty. GGR remitted the tax, based on the amount approved by the manufacturer, to Revenu Québec at the time that it was paid by the manufacturer for the repairs made under warranty. Revenu Québec, which administers the GST and the Quebec sales tax (QST) in Quebec, argued that the tax should have been collected and remitted when the claim was submitted to the manufacturer. Revenu Québec was of the view that the claims submitted by GGR to the manufacturers were "invoices" within the meaning of the ETA and that the tax therefore should have been collected at that time in accordance with paragraph 152(1)(a).

Favreau J, writing on behalf of the TCC, held that the taxpayer's claims did not constitute an "invoice" for the purpose of administering the sales tax because there was no legal obligation to pay on behalf of the manufacturer, which could always refuse all or part of the claim if certain requirements under its own guidelines for warranty claims were not satisfied. Thus, in the absence of a written agreement stipulating at what point the purchaser was "required to pay that consideration or part to the supplier" (ETA paragraph 152(1)(c)), only when the taxpayer's claim was approved by the manufacturer was there a real obligation to pay, and GGR was required to collect the applicable tax on the approved amount.

Favreau J's conclusions are consistent with the principles underlying the application of value-added taxes such as the GST and the QST: the supplier should not bear the burden of the sales tax during the course of its commercial activities and thereby suffer an impairment of working capital for the several weeks before the manufacturer approves the claim and pays the tax to the dealership or mechanic. Instead, the burden should be borne by the ultimate consumer of the supply. This conclusion also eliminates the need for the dealership or mechanic to ask the tax authority for a tax refund when the manufacturer refuses to pay the claim in full or in part.

Maude Caron-Morin
Joli-Coeur Lacasse LLP, Quebec City
Maude.Caron-Morin@jolicoeurlacasse.com

Remise de la TPS pour des fournitures sous garantie

À quel moment les garagistes et les concessionnaires automobiles qui honorent une garantie du fabricant devraient-ils remettre la TPS payable sur les réparations garanties par le fabricant — au moment où ils transmettent une demande de remboursement au fabricant, ou au moment où le fabricant paie la réclamation? La décision rendue dans *Garage Gilles Roy (2007) inc. c. La Reine* (2014 CCI 269) soutient qu'il s'agit de la seconde option. Cette décision pourrait trouver application aux réparations sous garantie au-delà du domaine de l'industrie automobile. Le litige portait sur l'application des articles 168 et 152 de la LTA (l'équivalent des articles 82 et 83 de la *Loi sur la taxe de vente du Québec*) aux réparations couvertes par la garantie du fabricant effectuées par le contribuable (GGR). GGR remettait la taxe à Revenu Québec, en fonction du montant de la réclamation approuvé, au moment où cette réclamation était payée par le fabricant pour la réparation sous garantie effectuée. Revenu Québec, qui administre la TPS et la taxe de vente du Québec (QST) au Québec, prétendait que la taxe aurait dû être perçue et remise au moment où la réclamation était transmise au fabricant. Revenu Québec était d'avis que les réclamations effectuées par GGR auprès des fabricants

constituaient une « facture » au sens de la LTA et que, par conséquent, la taxe aurait dû être perçue à ce moment en vertu de l'alinéa 152(1)a). Le juge Favreau, au nom de la CCI, a conclu que les réclamations du contribuable ne constituaient pas une « facture » aux fins de l'administration de la taxe de vente étant donné qu'il n'existait aucune obligation de payer pour le fabricant, ce dernier ayant toujours la possibilité de refuser tout ou partie de la réclamation si certaines exigences émanant de ces propres lignes directrices n'étaient pas rencontrées. Ainsi, en l'absence d'une convention écrite prévoyant le moment où l'acquéreur était « tenu de payer tout ou partie de la contrepartie au fabricant » (alinéa 152(1)c) LTA), ce n'était qu'au moment où la réclamation du contribuable était approuvée par le fabricant qu'il existait une réelle obligation de payer, et que GGR était tenue de percevoir la taxe applicable sur le montant approuvé. Les conclusions du juge Favreau sont conformes aux principes qui sous-tendent l'application d'une taxe sur la valeur ajoutée, telle que la TPS et la TVQ : le fournisseur ne doit pas supporter le fardeau de la taxe de vente dans le cadre de ses activités commerciales et ainsi souffrir d'une dépréciation de son fonds de roulement pendant les plusieurs semaines pouvant s'écouler avant que le fabricant n'approuve la réclamation et paie la taxe au concessionnaire ou au garagiste. Le fardeau doit plutôt être supporté par le consommateur ultime de la fourniture. Cette conclusion élimine également l'obligation pour le concessionnaire automobile ou le garagiste de présenter une demande de remboursement de taxes aux autorités fiscales lorsque le fabricant refuse de payer la réclamation en tout ou en partie.

Maude Caron-Morin
Joli-Coeur Lacasse S.E.N.C.R.L., Québec
Maude.Caron-Morin@jolicoeurlacasse.com

Placement Agencies: The Risk in Not Making Source Deductions

When organization A hires workers whose services are to be supplied to organization B, and organization B treats the workers in a way similar to the way it treats its own employees, which party is responsible for remitting the source deductions? This question arose in connection with Quebec payroll taxes in *Agence Océanica inc. c. Agence du revenu du Québec* (2014 QCCA 1385), where it was held that organization A (a placement agency) was the responsible party. This case appears to have wide application, particularly to the construction, industrial, health services, and agricultural sectors, where employment-like relationships between clients and the workers supplied by a placement agency seem to be common.

Océanica acted as an intermediary between nurses and the health-care institutions that used the nurses' services. Océanica considered the nurses to be self-employed workers, and it paid their wages without making the deductions for Quebec payroll taxes. Revenu Québec concluded that the workers were employees, and it reassessed Océanica for not making the source deductions for the payroll taxes. (Source deductions for federal and provincial income taxes were not at issue in the case.)

The relationship between the nurses and Océanica had the following characteristics. The nurses (1) had no written contract with Océanica, (2) were free to accept or refuse any suggested placement, (3) paid their professional dues and paid for their uniforms, and (4) did not receive any instructions from Océanica other than to report to a specific place at a specific time. The client determined the work method, supervised the work performed, and provided the necessary equipment. Once a nurse accepted an assignment, he or she was paid a set rate without any chance of profit or risk of loss.

The QCCA concluded that the nurses were employees because they had to respect the client's schedule and were fully integrated into its organizational structure; their work was evaluated; and the reporting relationships and nursing protocols were the same as they were for the client's employees. They performed their work under the direction and control of the client.

With respect to which party was responsible for the source deductions, the court analyzed the applicable legal provisions and noted that the employer, for tax purposes, is often the one that pays the wages. According to the court, an overall approach must be taken when identifying the true employer in a tripartite relationship, and the inquiry should not be limited to effective control over the employee's work performance and integration into the business. The ability to negotiate conditions of employment, for example, could be considered. In addition, the client may inherit obligations under certain laws, even though the placement agency is subject to other obligations under other laws.

The QCCA, like the trial judge (2012 QCCQ 5370), held that Océanica assumed certain responsibilities that it was granted by the client as a mandatary (a civil-law concept), particularly with respect to recruiting and paying the nursing

staff. Thus, it was responsible for the source deductions on the wages it pays. The notices of assessment were therefore upheld.

This case shows that it may be difficult for placement agencies to avoid responsibility for source deductions if they are in charge of paying the workers' wages and their clients and the workers are in an employment-like relationship. However, civil law tends to stress the intention of the parties in interpreting contracts; therefore, Quebec placement agencies could consider adding a clause to the staff recruitment contract to the effect that the contract is not intended to create a mandator-mandatary relationship between the parties.

Anne-Christine Boudreault
Cain Lamarre Casgrain Wells LLP, Montreal
anne.christine.boudreault@clcw.ca

Agences de placement : Le risque de ne pas effectuer de retenues à la source

Lorsqu'entité A embauche des travailleurs dont les services seront fournis à entité B, et qu'entité B traite ces travailleurs de la même façon que ses propres employés, laquelle des entités est responsable des retenues à la source (RAS)? Cette question a été soulevée dans l'affaire *Agence Océanica inc. c. Agence du revenu du Québec* (2014 QCCA 1385), dans laquelle la Cour a conclu qu'entité A (une agence de placement) était la responsable des RAS (plus précisément, des RRQ, RQAP, FSS et CNT). Cette décision n'est pas sans conséquence, plus particulièrement dans les domaines industriel, de la construction, des services de santé, ainsi que de l'agriculture, où les relations de type « employeur-employé » entre les clients et les travailleurs recrutés par une agence de placement sont courantes.

Océanica agissait à titre d'intermédiaire entre les infirmières et ses clients, les établissements de santé (ci-après, le « client »). Océanica estimait que les infirmières étaient des travailleuses autonomes, et versait leur rémunération sans prélever les RAS. Revenu Québec estimait plutôt que les travailleuses étaient des employées, et a établis de nouvelles cotisations à l'égard d'Océanica au motif qu'elle n'ait pas prélevé les RAS (les déductions à la source au titre de l'impôt fédéral et du Québec n'étaient pas en cause dans cette affaire).

La relation entre les infirmières et Océanica comportaient les caractéristiques suivantes : les infirmières (1) n'avaient aucun contrat écrit avec Océanica; (2) étaient libres d'accepter ou de refuser tout placement proposé; (3) payaient leur cotisation professionnelle et leurs uniformes; et (4) ne recevaient aucune directive d'Océanica, outre de se présenter à un endroit et à une heure précise. Le client déterminait les méthodes de travail, supervisait la prestation, et fournissait l'équipement nécessaire. Une fois l'assignation acceptée par l'infirmière, elle était payée sur une base forfaitaire, sans possibilité de profit ni risque de perte.

La Cour d'appel du Québec a conclu que les infirmières étaient des employées puisqu'elles devaient se plier à l'horaire du client et qu'elles étaient complètement intégrées dans sa structure organisationnelle : leur travail était sujet à évaluation, et les rapports hiérarchiques et les protocoles de soins étaient les mêmes que pour les employés de client. Elles effectuaient leur travail sous la direction et sous le contrôle du client.

Quant à la détermination du responsable des RAS, la Cour a analysé les dispositions législatives applicables et a retenu que l'« employeur », aux fins fiscales, est souvent celui qui verse le salaire. Selon elle, une approche globale doit être préconisée pour identifier le véritable employeur dans une relation tripartite, laquelle ne se limite pas au contrôle effectif sur la prestation de travail de l'employé et à l'intégration dans l'entreprise. La faculté de négocier les conditions de travail pourrait notamment être considérée. De plus, le client peut hériter d'obligations en vertu de certaines lois, alors que l'agence de placement est assujettie à d'autres obligations en vertu d'autres lois.

La Cour d'appel du Québec, au même titre que la juge de première instance (2012 QCCQ 5370), a conclu qu'Océanica assumait certaines responsabilités qui lui étaient confiées par le client à titre de mandataire (un concept de droit civil), plus précisément quant au recrutement et à la rémunération du personnel infirmier. En ce sens, elle était responsable des RAS sur la rémunération versée. Les avis de cotisation ont donc été maintenus.

Cette décision illustre qu'il peut être difficile pour les agences de placement d'éviter la responsabilité entourant les RAS lorsqu'elles sont, d'une part, tenues de payer les salaires des travailleurs recrutés, et d'autre part, que leurs clients et ces travailleurs sont dans une relation de type « employeur-employé ». Toutefois, puisqu'en matière d'interprétation contractuelle, le droit civil a tendance à accorder une certaine importance à l'intention des parties, il peut être pertinent pour les agences de placement au Québec de considérer l'insertion d'une

clause au contrat de recrutement de personnel, selon laquelle le contrat n'a pour effet d'entrainer la création d'une relation mandant-mandataire entre les parties.

Anne-Christine Boudreault
Cain Lamarre Casgrain Wells S.E.N.C.R.L., Montréal
anne.christine.boudreault@clcw.ca

If GAAR Applies, When Does Interest Start To Accrue?

J.K. Read Engineering Ltd. v. The Queen (2014 TCC 309) considered whether interest resulting from the application of GAAR should be computed starting from the date on which the notice of assessment was issued by the tax authorities, or from the taxation year in which the relevant transactions occurred. Hogan J decided in favour of the latter interpretation, which was that of the CRA.

In 2011, the appellants received a notice of assessment saying that GAAR applied to a 2007 transaction, with interest on the outstanding balance being computed from the 2007 taxation year. The CRA's view was that interest accrues from the date on which the tax was initially owing—the 2007 taxation year, since at that time GAAR applied even if the tax authorities had not intervened (that is, even if they had not taken any action to reassess the taxpayer on the basis that GAAR applied). The appellants believed that the interest on the balance due should be computed only from the 2011 taxation year—that is, the year in which the new notice of assessment was issued. The appellants based their appeal on several arguments, including the interpretation of subsection 245(7).

Hogan J began by reviewing the decision in *Copthorne Holdings Ltd. v. The Queen* (2007 TCC 481), which dealt with the application of sections 212 and 215 and subsection 227(8) and the obligation to make the necessary withholdings under part XIII. The judge dismissed the appellant's analysis of *Copthorne* on the ground that *Copthorne* had indeed defaulted from his withholding obligations but that a defence of due diligence could be established for obligations resulting from section 215.

Subsequently, the judge proceeded with the interpretation of subsection 245(7) in order to define its scope. He stated that the appellants' arguments conflicted with the obiter comments in *STB Holdings Ltd. v. Canada* (2002 FCA 386), which dealt with the application of the subsection to taxpayers affected by GAAR as third parties. The judge noted that while obiter dicta are not binding on the courts, those made by higher courts still deserve greater consideration.

Hogan J then analyzed the definition of "following" in the sentence "following the application of this section" in subsection 245(7) (and its French counterpart). He stated that it cannot be concluded that the tax liability based on GAAR begins from the receipt of the notice of assessment.

Finally, Hogan J considered subsection 161(1) relating to accrued interest and concluded that there is no special treatment in the subsection for assessments based on GAAR.

Sylvie Guindon
PricewaterhouseCoopers LLP, Quebec City
sylvie.guindon@ca.pwc.com

Si la RGAE s'applique, quand les intérêts commencent-ils à courir?

Dans *J.K. Read Engineering Ltd. c. La Reine* (2014 TCC 309) on devait déterminer si les intérêts découlant de l'application de la RGAE courent à compter de la date que la cotisation est établie par les autorités fiscales ou à compter de l'année où les opérations ont eu lieu. Le juge Hogan a opté pour la deuxième hypothèse et donne ainsi raison à l'ARC.

En 2011, les appelants ont reçu un avis de cotisation au motif que la RGAE s'appliquait à des opérations survenues en 2007, le tout avec des intérêts calculés à compter de l'année d'imposition 2007 sur le solde dû. L'ARC est d'avis que les intérêts courent à compter de la date où l'impôt était initialement payable, soit en 2007, puisque la RGAE s'appliquait alors, sans que les autorités fiscales soient intervenues — c'est-à-dire, même s'ils n'avaient pas encore cotisé le contribuable en invoquant la RGAE. Les appelants croient que les intérêts sur le solde dû ne devraient courir qu'à compter de l'année fiscale 2011, soit, l'année dans laquelle la nouvelle cotisation a été établie. Les appelants allèguent plusieurs arguments, dont celui relatif à l'interprétation du paragraphe 245(7).

Le juge Hogan examine tout d'abord l'arrêt *Copthorne Holdings Ltd. c. La Reine* (2007 CCI 481), qui concerne l'application des articles 212 et 215 et du paragraphe 227(8) et l'obligation d'effectuer les retenues nécessaires en vertu de la partie XIII. Le juge rejette l'analyse de *Copthorne* apportée par les appelants en raison du fait que dans *Copthorne*, malgré qu'il y avait effectivement eu un manquement aux obligations de retenues, une défense de diligence pouvait être apportée à l'égard des obligations prévues à l'article 215.

Par la suite, le juge procède à l'interprétation du paragraphe 245(7) afin d'en trouver la portée. Il considère

d'abord que les arguments des appelants sont contraires aux commentaires faits en obiter dans la cause *S.T.B. Holdings Ltd. c. La Reine* (2002 CAF 386) qui concernait l'application de ce paragraphe à l'égard de contribuables touchés par la RGAE au titre de tierce partie.

Le juge souligne que même si les obiter dicta ne lient pas les tribunaux, ceux prononcés par les plus hauts tribunaux jouissent tout de même d'une plus grande attention.

Par la suite, le juge Hogan analyse la définition du terme « following » dans la phrase « following the application of this section » du paragraphe 245(7), ainsi que sa contrepartie française. Le juge souligne qu'il ne peut en conclure que l'assujettissement à l'impôt en vertu de la RGAE commence à compter de la réception de l'avis de cotisation.

Enfin, le juge analyse paragraphe 161(1) concernant les intérêts courus et il en conclut que les cotisations résultant de l'application de la RGAE ne jouissent d'aucun traitement spécial en vertu de ce paragraphe.

Sylvie Guindon
PricewaterhouseCoopers S.R.L./S.E.N.C.R.L., Québec
sylvie.guindon@ca.pwc.com

No Forex Gain on Conversion of USD-Denominated Debentures

Agnico-Eagle Mines Limited (2014 TCC 324) was the first case in which a Canadian court considered whether the conversion of foreign-currency-denominated debentures into shares can result in forex gains or losses. Generally, such instruments are common for Canadian companies that are seeking debt financing in foreign markets. Convertible debentures are also popular with investors who may want to have the security of interest income with an option to convert into equity at a later date if the share price increases.

The general rule in subsection 261(2) is that Canadian taxpayers must determine their tax results using Canadian dollars. If any relevant amounts are in a foreign currency, paragraph 261(2)(b) requires that the amounts be converted into Canadian dollars at the relevant spot rate "for the day on which the particular amount arose." Subsection 39(2) provides that where a taxpayer has "made a gain" or "sustained a loss" due to currency fluctuation, the gain or loss is deemed to be a capital gain or loss from the disposition of foreign currency.

In 2002, Agnico issued US-dollar-denominated convertible debentures in the aggregate amount of US $144 million (Cdn $228 million based on the exchange rate at the time of issuance). Each of these interest-bearing debentures had a principal amount of US $1,000 and could be either converted or redeemed. On conversion, each holder was entitled to a fixed amount of shares of Agnico. On redemption by the issuer, each holder would receive the value of principal plus accrued and unpaid interest, both of which could be paid in cash or in shares of Agnico.

In 2005 and 2006, most debenture holders exercised their right to convert the debentures into shares. Agnico redeemed the few remaining debentures by issuing shares in lieu of cash. Accordingly, all of the debentures were extinguished. But due to a weakened US dollar, the Canadian-dollar value of the extinguished principal had decreased since issue. Because of this decrease, the CRA assessed Agnico on the basis that it realized capital gains under subsection 39(2).

The assessment was based on the application of spot exchange rates to the principal amounts of the debentures at the time of issuance (Cdn $228 million) and the time of extinguishment (Cdn $166 million). Agnico argued that subsection 39(2) should not apply on the conversion, since the amount paid for the debentures was effectively the amount paid for the shares that were later issued on conversions: accordingly, there was no forex gain on the repayment of debt. Agnico also noted that the increased market value of shares meant that the value of the shares issued on the extinguishment (Cdn $280 million) was greater than the amount for which the debentures were issued (Cdn $228 million).

Woods J agreed that from the economic point of view it was clear that Agnico did not realize a gain, having issued shares worth a higher amount than the amount that it received on the issuance of the debentures. From the tax point of view, however, the amount "paid out" by a taxpayer upon the issuance of shares is not the market value of the shares but rather the amount for which the shares were issued, which is determined by the agreement of the parties.

There are several ways to determine the amount at which the parties intended the shares to be issued. An amount added to stated capital may be relevant, but Agnico did not expressly authorize a specific amount to be added to its stated capital upon conversion. The transaction documents may also express the intention of the parties. Having reviewed the indenture, Woods J noted that the conversion right entitled the holder to a fixed amount of shares per debenture, resulting in the issue price of US $14 per share. Woods J then had to determine the appropriate spot rate date on which to convert this amount into Canadian dollars—the date on which the debentures were issued or the date on which they were extinguished. She concluded that the

appropriate conversion date was the date on which the debentures were issued, because this was the date when the consideration for the (future) issuance of the shares was fixed and received by Agnico. Accordingly, Agnico did not realize a forex gain on the conversion. However, Agnico did realize a gain on the few debentures that were redeemed. In particular, the indenture stated that the shares issued on redemption were "in satisfaction of the Redemption Price," which became payable on the date of the redemption. Therefore, the spot rate at the time of redemption applied, giving rise to a gain under subsection 39(2).

Overall, the decision reduces the taxation risk of convertible debentures, making them more predictable. The decision may also have wider implications: in particular, convertible debentures of income funds may be considered to be repaid at principal (rather than appreciated value), alleviating deemed interest issues under subsections 214(7) and (14).

Ilia V. Korkh
Couzin Taylor LLP, Vancouver
ilia.korkh@ca.ey.com

CRA and CPA Canada Establish Framework Agreement and Consultative Committees

On November 26, 2014, CPA Canada and the CRA signed a framework agreement that promises an enhanced working relationship between the two parties. The intent of the agreement is to achieve the two parties' common goal of a well-administered tax system that will better serve Canadian taxpayers. This framework agreement is one of the benefits of the newly unified accounting profession in Canada: it is much easier for the CRA to work with one national organization than with the previous three national accounting bodies.

Created under this agreement is an overarching steering committee, which will manage this new relationship and oversee the seven committees that cover particular areas. The committees allow CRA and CPA representatives to meet at least twice a year to discuss tax-related matters and to provide avenues for issue identification and discussion. The committees will not be the decision-making bodies: the CRA retains the sole authority and responsibility for dealing with any issues that are identified.

A CPA Canada blog posting dated January 6, 2015 provides the following brief account of the focus of the seven joint CRA-CPA committees:

1. Services—returns, publications, electronic services and non-audit compliance programs
2. Compliance—tax audits, dispute resolution and general risk assessment tools
3. Tax administration—technical issues, administrative or other fixes, technical information
4. Scientific research and experimental development (SR&ED)—audits, disputes and administrative policies
5. Commodity tax—claims processing, audit processes, technical issues and fixes, technical information
6. Red tape reduction—clarity, redundant information and processes, availability and timeliness of information and communication with taxpayers
7. Training and learning—improving CRA auditor training programs

The blog post notes that progress has already been made in cooperation between the CRA and CPA Canada—namely, consultations to fix problems related to the current deadlines for T1 and T3 reporting, and CPA Canada's first national SR & ED Symposium, to be held in Toronto on February 5 and 6, 2015.

The blog post links to a presentation by CPA Canada's Vice-President of Taxation, which lists the CRA and CPA Canada co-chairs of each of the seven committees. The presentation also lists several bullet points for each committee that describe the committee's focus in more detail. For example, the commodity tax committee will work on pre-assessment claims processing; the quality of CRA audit processes; the maintenance of required technical capacity; problematic technical issues and the availability of administrative fixes; identifying possible non-administrative solutions; the availability of technical information; and CRA-Revenu Québec consistency.

An appeals advisory committee, apparently established before the new framework agreement, is to continue its work, providing input on (1) appeals case backlog, (2) independence and impartiality, and (3) settling agreements and operational irritants.

Will this new structure of joint committees between CRA and tax practitioners be successful? CPA Canada has identified the following factors as critical to success: top-down commitment on the part of CPA Canada and the CRA; participants' willingness to find effective solutions; effective changes resulting from discussions; CPA Canada's influence on members' tax practices; and inclusion of other stakeholder groups where appropriate.

Leona Liu
Ernst & Young LLP, Ottawa
leona.liu@ca.ey.com

British Columbia Natural Gas Tax Credit

Coinciding with the enactment on November 27, 2014 of the Liquefied Natural Gas Income Tax Act (SBC 2014, c. 34) ("the LNG Tax Act") implementing an LNG income tax, the provincial government also enacted amendments to the provincial Income Tax Act ("the BC ITA") implementing a natural gas income tax credit.

The credit, effective for qualifying corporations for taxation years beginning on or after January 1, 2017, is computed as 0.5 percent of the cost of natural gas acquired or notionally acquired at an LNG facility for LNG tax purposes. The credit could reduce a corporation's provincial income tax rate from 11 percent to 8 percent, and any unused credit can be carried forward indefinitely (subject to certain conditions). The mechanics of section 172 of the BC ITA result in the credit being available to reduce a qualifying corporation's income taxes (but not LNG taxes) payable on all taxable income allocated to British Columbia.

Pursuant to sections 172(1) and (2) of the BC ITA, to qualify for the credit a person must

1) be a taxpayer as defined in the LNG Tax Act;
2) maintain a permanent establishment (PE) in the province for income tax purposes at any time during each relevant taxation year; and
3) acquire, or notionally acquire, natural gas at the inlet meter of an LNG facility in the province during the relevant taxation year.

LNG Taxpayer

An LNG taxpayer, as defined in section 1 of the LNG Tax Act, is a person who engages in or has income derived from liquefaction activities, whether or not the person is liable to pay LNG tax. The definition of "liquefaction activities" is broad, and in certain circumstances it can be difficult to determine whether a person is an LNG taxpayer. For example, an upstream producer that disposes of natural gas to an LNG processor may or may not be an LNG taxpayer, depending on the place where ownership of the gas transfers. Transactions must be carefully structured to achieve the desired tax results.

Provincial PE

Assessing whether a taxpayer has a PE in a province is governed by the federal Income Tax Regulations. The taxpayer should have a PE in British Columbia if the taxpayer owns an LNG facility, maintains an office, or operates a natural gas well there. However, the corporation may not have a PE in British Columbia (and as a result may be ineligible for the natural gas tax credit) if it maintains an office and concludes contracts (natural gas purchases, pipeline transportation, processing, and sales) outside British Columbia and natural gas is processed under a tolling arrangement with another entity that owns an LNG facility in British Columbia.

Acquires or Notionally Acquires

The application of the third criterion—that the taxpayer acquires, or notionally acquires, natural gas at the inlet meter of an LNG facility in British Columbia—should generally be straightforward in respect of a corporation directly engaged in liquefaction activities. However, eligibility under this criterion is less clear for a corporate member of a partnership when the partnership acquires or notionally acquires the natural gas. In that case, the corporation's eligibility depends on the interaction of deeming provisions in the natural gas tax credit rules and the LNG Tax Act. It appears that the intent of the rules is to extend the credit to the members of a partnership engaged in processing activities. In particular, if the qualifying corporation is a member of a partnership (as defined by section 97 of the LNG Tax Act), section 172(5)(b) provides that in determining a corporate partner's cost of natural gas, the corporation is deemed to have acquired natural gas in an amount equal to the corporation's share of the partnership's natural gas cost. Implementing this calculation appears to be relatively straightforward for a corporate partner of a single-tier partnership, but the analysis is more complex for a corporate partner of a multi-tier partnership.

Adam Power
Ernst & Young LLP, Calgary
adam.power@ca.ey.com

Estate Plans Involving Trusts Require Review

Subsections 104(13.4) and 160(1.4) (enacted on December 16, 2014 and applicable to the 2016 and subsequent taxation years) complicate and delay the administration and distribution of estate and trust assets. The subsections have the potential to derail current estate plans that use spouse trusts, alter ego trusts, and joint partner trusts.

Subsection 104(13.4) deems trust income arising from the death of an individual—for example, the spouse in a spouse trust, or a similar income beneficiary of an alter ego

trust or a joint partner trust—to become payable in the year to that individual. Where this subsection deems an amount to be payable to an individual, and thus taxed in the hands of the individual's estate, the individual and the trust are jointly and severally liable for the taxes payable up to that amount under subsection 160(1.4).

To understand how these provisions create a problem and how the problem can be solved, consider a situation involving a second marriage. Assume that Husband and Wife have both been married before and both have children from the previous marriages. Husband wants to provide for Wife after his death, but he wants his children to ultimately receive the bulk of his estate. Husband's will sets up a spouse trust under the rollover provisions in subsection 70(6), naming Wife as income beneficiary and Husband's children as capital beneficiaries. Wife's will is different: under it, she simply leaves all of her estate to her children. Assume that Husband dies first and that Wife dies a few years later.

Under the current tax provisions, on the death of Wife, there will be a deemed disposition at fair market value of all the capital property in the spouse trust. Any resulting tax liability will be paid using the assets in the spouse trust; the remainder will be available for distribution to Husband's children.

Starting in the 2016 taxation year, on the death of Wife, there will still be a deemed disposition at fair market value of all of the capital property in the spouse trust, but any resulting tax liability will be paid by Wife's estate (subsection 104(13.4)), not by the spouse trust. Consequently, all the assets in the spouse trust will be available for distribution to Husband's children.

The problem is that a full distribution of the trust's assets cannot happen until the spouse trust trustee is sure that Wife's estate has paid the tax liability arising from the operation of subsection 104(13.4); if such a payment did not occur, there could be a need to hold back the funds required to pay a liability under subsection 160(1.4). However, the trustee for the spouse trust cannot pay the tax owing because that would be a breach of his or her duties as a trustee (to preserve the assets for the benefit of the trust's beneficiaries). Paying the tax effectively takes money from the beneficiaries (Husband's children) and uses it to benefit someone else (Wife's children).

The estate executor could consider obtaining a clearance certificate from the CRA certifying that the estate has satisfied all of its tax liabilities, but providing the certificate to the spouse trust trustee could constitute a breach of confidentiality. Further, the spouse trust trustee would not be able to make a successful Privacy Act request to determine whether a clearance certificate had been issued without the authorization of the estate executor.

This problem can be solved simply by amending the two wills, provided that Husband and Wife are still alive and mentally competent. After Husband's death, however, a court order will be required. Since a court will have to weigh the interests of different parties against one another, the outcome is uncertain.

Colleen D. Ma
Dunphy LLP, Calgary
cma@dunphyllp.ca

De Facto Control Broadened: More Than a Board of Directors Test

The concept of de facto control, which is often used in determining whether a corporation is a CCPC and whether two corporations are associated, has been broadened in recent years beyond the board of directors test in *Silicon Graphics* (2002 FCA 260) to a broader operational control test. This trend is continued in *McGillivray Restaurant Ltd.* (2014 TCC 357), although the strength of its facts in the CRA's favour may limit its applicability in other situations.

The appellant was the operator of a Keg restaurant in Winnipeg. Ruth Howard owned 76 percent of the shares of the appellant; her husband, Gordon Howard, owned the remainder. Mr. Howard also owned two other corporations. The first operated two other Keg restaurants in Winnipeg and provided management services and financing to the appellant; the second served as landlord of the appellant's restaurant premises.

Mr. Howard effectively managed the appellant's restaurant (he was the general manager of all the Keg restaurants in Winnipeg). Through his corporations, he made many contractual arrangements for the appellant, including its financing and banking arrangements. Notably, the franchise agreement granting Mr. Howard's corporations the right to operate Keg restaurants in Winnipeg was assigned to the appellant, in part, based on the assurance that Mr. Howard would operate the business.

Boyle J applied the test for de facto control set out in *Silicon Graphics*: de facto control exists where there is a "clear right and ability to effect a significant change in the board of directors or the powers of the board of directors" or "to influence in a very direct way the shareholders who would otherwise have the ability to elect the board of directors."

Boyle J acknowledged that those principles could be interpreted broadly or narrowly, since many factors could give rise to influence over a shareholder or a board of directors. Earlier jurisprudence referenced a broad test but applied it in a highly fact-specific manner. For example, a mere franchise agreement did not meet this test (*Lenester Sales Ltd.*, 2003 TCC 531), but the provision of all employees, premises, and management services did (*9044 2807 Québec Inc.*, 2004 FCA 23). In the end, after reviewing cases that had considered more abstract factors such as economic controlling influence (*Mimetix Pharmaceuticals Inc.*, 2001 CanLII 787 (TCC), aff'd. 2003 FCA 106) and dominating management influence (*Plomberie J.C. Langlois Inc.*, 2004 TCC 734, aff'd. 2006 FCA 113), the court in *McGillivray* determined that the proper approach to control issues was to look at "broader manners of influence" (at para. 46) such as "economic, contractual or moral influence, operational control, economic dependence [and] family relations" (at para. 43).

Mrs. Howard's involvement in her corporation was minimal. Mr. Howard's influence went beyond the mere provision of business expertise and management acumen; his contractual rights under the franchise agreement arguably empowered him to fully deplete the appellant of its ability to conduct business. His direction over virtually all of the appellant's affairs situated his influence at the upper end of the spectrum of control. Boyle J found that he had de facto control of the appellant, and the appellant was therefore associated with Mr. Howard's other corporations.

The *McGillivray* decision raises questions about the many circumstances in which passive shareholders yield virtually all control to an autonomous manager. What level of business control will constitute de facto control of the corporation? In particular, does emotional or moral influence—a factor present in most family relationships—indicate de facto control?

Ashvin Singh
Dentons Canada LLP, Edmonton
ashvin.singh@dentons.com

CRA's Proposed Registration of Tax Preparers: A Summary of the Issues

On January 17, 2014, the CRA released its consultation paper on the proposed registration of tax preparers program (RTPP). The consultation process ended on May 31, 2014. This article summarizes the RTPP as described by the CRA in the consultation paper, and outlines some of the concerns that were raised by tax practitioners during and after the consultation process.

Under the RTPP, persons who prepare T1 and T2 returns for a fee will be required to register with the CRA. Upon registration, such persons will be assigned a personal information number (PIN). Firms in the business of preparing tax returns and firms that employ more than one registered tax preparer will also be given an entity identification number (EIN).

It is important to note that not every employee of a firm that prepares tax returns will be required to register under the RTPP. The persons who are required to register are the tax preparers who review the work of other tax preparers and provide final approval of tax returns. At a large public accounting firm, these persons will typically be senior managers and partners.

It is also important to note that registration is not required for individuals who prepare the tax returns of their employers (such as internal accounting department employees), persons who prepare tax returns free of charge (such as the volunteers in the free CPA tax clinics program), and persons who are not held accountable by their employers for the accuracy and completeness of tax returns (such as associates at an accounting firm who do not approve tax returns).

Once the RTPP is in effect, both PINs and EINs will be required on all tax returns. The CRA claims that by using PINs and EINs it will be able to associate (1) errors in a tax return with a particular tax preparer and (2) a particular tax preparer with his or her employer. The CRA hopes that the RTPP will allow it to identify tax preparers and firms that make recurring errors so that it can work with those persons and firms to prevent such occurrences, thereby improving the accuracy and completeness of tax returns generally. Fewer errors in tax returns will result in fewer follow-up interactions (such as audits) between the CRA and taxpayers. In turn, business owners will be able to spend more time running their businesses and less time dealing with the CRA.

Once the CRA has identified a recurring error, it will be able to take a variety of approaches such as education, follow-up visits, development of action plans, and audits of the tax preparer's clients if non-compliance persists. Sanctions could be imposed on tax preparers who either fail to take reasonable care and exercise proper due diligence to correct errors or are deliberately non-compliant. Possible sanctions include assessing a penalty, introducing a period of monitoring, and reporting the tax preparer to a provincially

regulated accounting or legal body. The CRA states in the consultation paper that a robust redress process will be available; the first level of redress would be an appeals process within the CRA itself.

A number of issues and concerns were raised in the consultation process:

1) The proposal aims to reduce recurring errors by identifying errors made by a particular tax preparer, informing the tax preparer of the errors, and showing him or her how to correct the errors. Presumably, an occasional transposition of digits would not be a concern for the RTPP, and intentional misrepresentation or omission would be targeted by existing CRA programs. What type of error is intended to be addressed? The concern is that "error" can be defined differently by the taxpayer, the tax preparer, and the CRA. In addition, since tax preparers do not audit the information provided to them for tax preparation, any missing or inaccurate information is usually the fault of the taxpayer. It would be unfair to shift the responsibility from the taxpayer to the tax preparer under the RTPP.
2) The requirement for both a PIN and an EIN will increase the administrative burden for tax preparers. Also, the CRA already has an existing system for registering e-filers. Some tax preparers suggest that existing elements of the registration system, such as e-filer numbers, should be incorporated into the RTPP so that new registration processes and numbers are not needed.
3) Currently, the redress process that is contemplated is a panel within the CRA itself. It would be preferable to have a review panel that is unbiased and independent of the CRA. If a tax preparer is found noncompliant under the RTPP, it is unclear how long the non-compliance characterization will remain attached to the preparer's record.
4) A tax preparer who is sanctioned under the RTPP may find his or her ability to obtain professional liability insurance affected. Many individuals and firms registered with public accounting bodies must provide proof of liability insurance. In extreme situations, severe sanctions imposed under the RTPP may result in a person or firm being unable to obtain insurance and thus unable to continue to provide services. At the very least, sanctions may result in an increase in insurance premiums.
5) The CRA stated that it is giving consideration to publishing a list of registered tax preparers. Taxpayers may misconstrue a published list as conferring official approval or recognition of accounting skills and experience. It is not advisable to publish such a list when the CRA will not refuse a registration—anyone can apply and register. Some tax preparers suggest that certification should be required to ensure that tax preparers are qualified to practise; others suggest that only provincially regulated tax preparers such as CPAs should be allowed to register under the RTPP.
6) It is unclear whether "tax preparation" includes amending and/or disputing previously filed returns. Therefore, it remains to be seen whether the proposals will apply to firms that engage only in tax dispute resolution.
7) Many tax practitioners are concerned that the RTPP may be the first step toward government regulation of the tax profession. Some say that any intervention from the government is unnecessary, given that the accounting and legal professions are already self-regulated. Some research on disciplinary action taken by the professions' self-regulatory bodies against practitioners who have been subject to the more severe sanctions under the Act (such as the third-party penalties in section 163.2) might help to resolve this issue.

Jin Wen
Grant Thornton LLP, Markham
Jin.Wen@ca.gt.com

Incomplete Address: Notice of Assessment Not "Mailed"

GST/HST rules provide that a notice of objection must be filed with the minister within 90 days of the mailing of an assessment (ETA subsection 301(1.1); the parallel provision in the ITA is subsection 165(1)). However, as established in *Le sage au piano v. The Queen* (2014 TCC 319), the clock may not start ticking on the 90-day period if the CRA has omitted important details of the taxpayer's address on the notice of assessment. The decision extends the doctrine from previous income tax cases, which held that it is insufficient for the CRA to mail a notice of assessment to an incorrect address (see, for example, *Canada v. 236130 British Columbia Ltd.*, 2006 FCA 352). The fact that litigation continues in this area also highlights the fact that there is no electronic means of determining whether a notice of assessment has been issued.

The facts of the case are simple. In a dispute regarding the amount of net tax to be reported in relation to the fair

market value of a residential complex, the minister advised the taxpayer of the audit results on May 23, 2013, and issued a notice of assessment on June 3, 2013. However, the notice of assessment was addressed to the taxpayer's office without a suite number, and the taxpayer denied receiving it. The taxpayer became aware of the assessment only on September 16, 2013, after the 90 days had expired. The taxpayer applied to the CRA for an extension of time to file an objection, was refused, and made a further application to the TCC for an extension.

At the TCC, the CRA argued that ETA subsection 334(1) creates an irrebuttable presumption of receipt by a taxpayer once the assessment is sent to a correct address; failures by the postal service to deliver are not relevant. The taxpayer argued that the absence of the suite number was important because its office was located in a multi-storey building with 20 tenants, and the mailbox on the main floor did not bear the taxpayer's name. After considering the evidence, the TCC was of the view that the address on the assessment was incomplete and that the suite number was essential in this particular situation. The TCC found that the minister failed to prove that the address provided by the taxpayer did not include the suite number. Thus, the assessment had not been "mailed." Accordingly, the taxpayer's application for an extension of time was allowed.

The TCC further addressed the question of whether, had the mailing been correct, the taxpayer could have achieved an extension of time through the normal rules for late filing (ETA section 304). The court concluded that the taxpayer had met all the necessary conditions (ETA subsection 304(5)), including (1) a bona fide intention to object and (2) that it was just and equitable to grant the application given the reasons set out in the application and the circumstances of the case.

This case serves as a reminder to taxpayers to monitor the issuance of assessments after audits are completed or rebate claims are filed. However, such monitoring is not always as easy as it perhaps should be. Individuals can check on income tax assessments through the My Account service, but the My Business Account service does not cover such notices for either GST or corporate income tax. Companies will therefore have to make inquiries either in writing or orally via the CRA's Business Window.

Jenny Siu
Millar Kreklewetz LLP, Toronto
js@taxandtradelaw.com

OECD Recommendations for Collecting Sales Tax on E-Commerce

An earlier article discussed the background to the government's call for submissions on the effective collection of GST/HST on e-commerce sales by non-resident vendors (see "Hint in Budget: More GST/HST on the Digital Economy?" *Canadian Tax Focus*, May 2014). On December 18, 2014, the OECD released a draft discussion paper outlining its recommendations for addressing the issue.

The OECD draft endorses the mandatory registration of non-residents that make e-commerce sales to consumers as the most effective way of ensuring that tax is collected. To lessen the compliance burden of registration (a particular concern for vendors with obligations in multiple jurisdictions), the OECD recommends a simplified version of registration. This version does not require the same detailed reporting and invoicing as regular registration, but it also does not allow for the recovery of input tax credits (which should not be significant for non-residents that do not incur Canadian-taxable expenses). Earlier OECD drafts had canvassed other approaches, such as a digital transaction withholding tax. According to the OECD, however, experience shows that registration with simplified compliance requirements is a practical and relatively effective way of securing tax revenue and minimizing the competitive inequity between resident and non-resident vendors. A recently enacted provision explicitly allows the CRA to register persons that it believes should be registered by sending a notice of intent (see "CRA To Force GST/HST Registration," *Canadian Tax Focus*, August 2014). Although the provision does not appear to have been enacted with the digital economy specifically in mind, it will be interesting to see whether the CRA will attempt to use this power to compel non-resident e-commerce vendors to register.

In order to actually enforce a registration requirement, the OECD recommends reliance on existing tax treaties and agreements to support the identification of potential registrants (tax information exchange agreements and tax conventions) and enforcement (the Convention on Mutual Administrative Assistance in Tax Matters). In principle, this multilateral approach should help to address the practical difficulties faced by any single jurisdiction in attempting to unilaterally enforce non-resident registration. However, this approach may not be entirely effective if the other jurisdiction has a limited incentive to cooperate because, for example, it does not receive sufficient reciprocal benefit.

Canada's largest trading partner, the United States, does not have a broad-based federal VAT: state and local sales and use taxes tend to focus on tangibles and certain services. Therefore, the United States may not suffer tax revenue loss to the same extent as Canada on inbound e-commerce purchases from unregistered non-residents. The benefit may also be one-sided in that the United States is likely to be a net exporter of e-commerce to Canada and therefore less concerned about the competitive inequity posed by unregistered Canadian vendors.

Simon Thang
KPMG Law LLP, Toronto
simonthang@kpmglaw.ca

Alicia Malone
KPMG LLP, Toronto
aliciamalone@kpmg.ca

Supreme Court Docket Update

Awaiting Judgment

- *Julie Guindon v. The Queen*. The case was heard on December 5, 2014, and a webcast is available. This is an appeal from *Canada v. Guindon* (2013 FCA 153). This decision pertains to the nature of adviser penalties under section 163.2. A short summary of the case is available here.
- *Minister of National Revenue v. Duncan Thompson*. The case was heard on December 4, 2014, and a webcast is available. This is an appeal from *Thompson v. Canada (National Revenue)* (2013 FCA 197). This decision pertains to the issue of whether a lawyer subject to enforcement proceedings can claim solicitor-client privilege over his accounts receivable. A short summary of the case is available here.

Leave Granted

- *Attorney General of Canada, et al. v. Chambre des notaires du Québec, et al.* Leave to appeal from *Canada (Procureur général) c. Chambre des notaires du Québec* (2014 QCCA 552) sought by the Department of Justice; granted with costs on December 18, 2014. This decision pertains to whether subsection 231.2(1) and section 231.7 of the Act, together with the exception set out in the definition of "solicitor-client privilege" in subsection 232(1), are unconstitutional vis-à-vis notaries and lawyers in Quebec on the basis that these provisions are contrary to the Canadian Charter of Rights and Freedoms. A short summary of the case is available here.

Leave Sought by the Department of Justice

- None.

Leave Sought by the Taxpayer

- *Immunovaccine Technologies Inc. v. The Queen* (from 2014 FCA 196). Leave sought on November 17, 2014.
- *Brent Kern Family Trust v. The Queen* (from 2014 FCA 230). Leave sought on December 10, 2014.
- *Terry Piersanti v. The Queen* (from 2014 FCA 243). Leave sought on December 24, 2014.
- *London Life Insurance Company v. The Queen* (from 2014 FCA 106). Leave sought on June 30, 2014.

Leave Denied

- *The Queen v. Geoffrey Last* (from 2014 FCA 129). Leave sought by the Department of Justice; denied with costs on November 13, 2014. A short summary of the case is available here.
- *Jack Klundert v. The Queen* (from 2014 FCA 156). Leave sought by the taxpayer; denied with costs December 4, 2014. A short summary of the case is available here.
- *Burg Properties Ltd. v. The Queen* (from 2014 FCA 154). Leave sought by the taxpayer; denied on December 18, 2014. A short summary of the case is available here.

Marie-France Dompierre
Deloitte Tax Law LLP, Montreal
Mdompierre@deloittetaxlaw.ca

Dossiers portés en appel devant la Cour suprême — mise à jour

En attente de jugement

- *Canada c. Guindon* (2013 CAF 153) L'appel a été entendu le 5 décembre 2014. Une diffusion web de l'audition est disponible ici. Cet arrêt se rapporte à la nature de la pénalité imposée à un tiers en vertu de l'article 163.2. Un court sommaire de l'arrêt est disponible ici.
- *Thompson c. Canada (Revenu national)* (2013 CAF 197) L'appel a été entendu le 4 décembre 2014. Une diffusion web de l'audition est disponible ici. Cet arrêt se rapporte à la question de savoir si un avocat qui est visé par des procédures d'exécution peut invoquer le secret professionnel de l'avocat à l'égard de ces créances. Un court sommaire de l'arrêt est disponible ici.

Demande d'autorisation accueillie

• *Procureur général du Canada, et al. c. Chambre des notaires du Québec, et al.* (de 2014 QCCA 552). Demande d'autorisation déposée par le Ministère de la Justice accueillie avec dépens le 18 décembre 2014. Cet arrêt se rapporte à la question de savoir si le paragraphe 231.2(1) et l'article 231.7 ainsi que la définition du « privilège des communications entre avocats et clients » au paragraphe 232(1) de la LIR sont inconstitutionnels, en ce qui concernant les avocats et notaires au Québec, puisqu'ils seraient contraire à la Charte canadienne des droits et libertés. Un court sommaire de l'arrêt est disponible ici.

Demande d'autorisation déposée par le Ministère de la Justice

• Aucune.

Demande d'autorisation déposée par le contribuable

• *Immunovaccine Technologies Inc. c. Sa Majesté la Reine* (de 2014 FCA 196). Demande d'autorisation déposée le 17 novembre 2014.

• *Brent Kern Family Trust c. Sa Majesté la Reine* (de 2014 FCA 230). Demande d'autorisation déposée le 10 décembre 2014.

• *Terry Piersanti c. Sa Majesté la Reine* (de 2014 FCA 243). Demande d'autorisation déposée le 24 décembre 2014.

• *London Life, compagnie d'assurance-vie c. Sa Majesté la Reine* (de 2014 CAF 106). Demande d'autorisation déposée le 30 juin 2014.

Demande d'autorisation rejetée

• *La Reine c. Geoffrey Last* (de 2014 CAF 129). Demande d'autorisation déposée par le ministère de la Justice rejetée avec dépens le 13 novembre 2014. Un court sommaire du dossier est disponible ici.

• *Jack Klundert c. Sa Majesté la Reine* (de 2014 FCA 156). Demande d'autorisation déposée par le contribuable rejetée avec dépens le 4 décembre 2014. Un court sommaire du dossier est disponible ici.

• *Burg Properties c. la Reine* (de 2014 CAF 154). Demande d'autorisation déposée par le contribuable rejetée avec dépens le 18 decembre 2014. Un court sommaire du dossier est disponible ici.

Marie-France Dompierre
Droit Fiscal Deloitte S.E.N.C.R.L./s.r.l., Montréal
Mdompierre@deloittetaxlaw.ca

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Halifax:

- Sean Glover (sglover@coxandpalmer.com)
- Dawn Haley (dawn.m.haley@ca.pwc.com)

Quebec City:

- Amélie Guimont (amelie.guimont@ca.pwc.com)

Montreal:

- Stephanie Jean (sjean@dcdaf.qc.ca)
- Alexandre Laturaze (Laturaze.alexandre@rcgt.com)

Ottawa:

- Mark Dumalski (mdumalski@deloitte.ca)
- Leona Liu (Leona.Liu@ca.ey.com)

Toronto:

- Nicole K. D'Aoust (ndaoust@millerthomson.com)
- Melanie Kneis (melanie.kneis@ca.ey.com)

Winnipeg:

- Greg Huzel (Greg.Huzel@mnp.ca)
- Sheryl Troup (Sheryl.Troup@mnp.ca)

Edmonton:

- Tim Kirby (tkirby@felesky.com)

Calgary:

- Jean-Philippe Couture (JCouture@blg.com)
- Bernice Wong (Bernice.P.Wong@td.com)

Vancouver:

- Trevor Goetz (Trevor.Goetz@ca.gt.com)
- Matthew Turnell (matthew.turnell@justice.gc.ca)

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