VIDEO TAX NEWS

Monthly Tax Update Newsletter

February 2025 — ISSUE 522

WHAT'S INSIDE

1 Government Releases

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FINANCE RELEASES

1. **Late-Breaking News: January 31, 2025** – The Department of Finance announced that the **effective date** for the proposed **capital gains inclusion rate** increase from 50% to 2/3 would be **deferred** to **January 1, 2026**. The proposed implementation date of the increase to the lifetime **capital gains exemption** to **$1,250,000** (June 25, 2024) and the Canadian entrepreneurs' incentive (January 1, 2025) would **not change**.

2. **Late-Breaking News: January 23, 2025** – The Department of Finance released **draft legislation** to **extend** the **deadline** for making **donations** eligible for the 2024 tax year to **February 28, 2025** (see VTN 521(7955)). The gift must be in the form of **cash**, or transferred by way of cheque, credit card, money order or electronic payment. The gift **cannot** be made through a **payroll deduction** or by an **individual's will**, if the **individual died after 2024**. **Corporations** and **graduated rate estates** with taxation years that end from November 15, 2024, to December 31, 2024, that make a gift to a charity or other qualified donee before March 2025 may choose to claim the eligible amount of the gift on their 2024 tax return.

the deferral of this significant proposal

CRA RELEASES

1. **Late-Breaking News: January 31, 2025** – CRA released a Tax Tip (Update on the Canada Revenue Agency's **administration** of the **proposed capital gains taxation changes**) confirming that they will **administer** the currently enacted **capital gains inclusion rate of 50%** in light of the deferral of the **effective date** of the proposed increase to the capital gains inclusion rate to **January 1, 2026**. See VTN 522(8082) for further details.

2. **Late-Breaking News: January 23, 2025** – CRA released a Tax Tip (**Clarifying** the **CRA's approach** in administering the **proposed** tax measure to **extend** the **2024 charitable donations deadline**) stating that it will proceed with **administering** the **2024 deadline extension** for charitable donations for 2024 tax returns (see VTN 521(7955)). CRA has provided additional commentary on their extension of the deadline for making 2024 charitable donations webpage.

   efficient client communication as to whether to claim donations made in early 2025 on the 2024 return

3. **Late-Breaking News: January 21, 2025** – CRA released the **2024 meal** and **vehicle rates** used to **calculate travel expenses** for **moving** expenses, **medical** expenses and the **northern residents** deduction under the **simplified method**. A flat rate of $23/meal, to a maximum of $69/day (sales tax included) per person, is available without receipts. See Appendix B for the per kilometre travel rates that can be used based on the province or territory where the travel began.

4. **Late-Breaking News: January 21, 2025** – CRA updated their personal income tax: what's new for 2024 webpage stating that the **April 15**, 2025 payment for the **Canada carbon rebate rural supplement** would reflect the **proposed expanded eligibility** to the rural supplement as included in the 2024 Fall Economic Statement (see VTN 521(7955)).

5. **Late-Breaking News: January 14, 2025** – On the EFILE news and program updates webpage, CRA announced that **T1** and **T3 EFILE** along with **T1135 web services** will be **offline** on February 1, 2025 but **resume** at 8:30 a.m. (ET) on **Monday, February 24, 2025**.

6. **January 14, 2025** – CRA released a Tax Tip (Students, it's time to get tax savvy – the benefits (and credit payments) of filing your tax return) that provided a listing of **benefits**, **credits** and **possibilities** that may be available or applicable to **post-secondary students**.

7. **January 13, 2025** – CRA released a new **single sign-in landing page** for users to access **all of the CRA accounts** to which their social insurance number has been connected (My Account, My Business Account and Represent a Client). To access this new "**CRA account**" portal page, users are required to agree to an updated **terms and conditions of use**, which can also be found and reviewed on their

   ability to sign into all CRA accounts at the same time

website.

8. **January 10, 2025** – CRA released a Tax Tip (Here are the keys to unlocking housing-related tax savings this filing season!) that provided a **listing** of **benefits**, **credits, incentives** and **cautions** relating to the **acquisition**, **modification** and **selling of real property**.

9. **January 7, 2025** – CRA released a Tax Tip (Stress-free filing starts now! Here are five easy ways to help you **get ready for tax season**) directed at **individual taxpayers**. Many items related to the use of **My Account**, including the new **online chat** function that allows **real-time communication** with a **CRA agent**. CRA also **confirmed** that, because **June 15, 2025** falls on a **Sunday**, returns for **self-employed individuals** and their spouses normally due on that date will be **due June 16, 2025**.

10. **January 2, 2025** – On the EFILE news and program updates webpage, CRA announced that EFILE accounts must be renewed in order to transmit **individual** and **business authorization** and cancellation requests, **special elections** and returns and **file T2** returns as of **February 1, 2025**

    The release also noted that **Form T183** will be **revised** for the **2025 filing program**.

11. **December 19, 2024** – CRA released two **webinars** that provided a wide variety of information on **benefits and credits** available to **international students** and **persons with disabilities**.

reviewing these webinars to see the breadth of possibilities available

See **Appendix A** for a listing of **resources prepared** by **Video Tax News** that are available on the Video Tax News portal and for recently released/updated **CRA publications and forms**.

OTHER RELEASES

1. **January 8, 2025** – Employment and Social Development Canada released a **backgrounder** providing **guidance** on **changes to CPP benefits** that came into effect on January 1, 2025 relating to **death**, **survivors**, **children** and **children of disabled contributors** (see VTN 514(7695)).

this additional guidance on CPP benefit changes

2. **January 6, 2025** – The Proclamation **proroguing** Parliament **to March 24, 2025** was published.

2 Canada's COVID-19 Response 522(2)

CEWS – QUALIFYING REVENUE

whether the receipt was just a reimbursement

A December 13, 2024 **Technical Interpretation** (2024-1012461I7, Steven Pannozzi) considered whether certain **reimbursements** or **advances** related to **payroll expenses** were qualifying revenue for **Canada emergency wage subsidy** (CEWS) purposes (Subsection 125.7(1)). The taxpayer **provided management services** for a hotel. The taxpayer received a management fee as well as **payments to cover payroll expenses** incurred by the taxpayer on **behalf of the hotel**. CRA opined that while the management fee represented revenue from rendering services, the **payroll reimbursements** or advances were **not qualifying revenue** because they were **not inflows** from the eligible entity's **ordinary business activities** but merely **reimbursements of expenses** borne on behalf of the hotel due to its **agency relationship**.

CEWS – EXTENSION FOR AMENDMENT

A December 6, 2024 **Federal Court** case (C.W. Carry Ltd. vs. AGC, T-2640-23) reviewed an application for **judicial review** of CRA's decision to **deny** an **extension request** to **amend** a reference period election error for a **Canada emergency wage subsidy** (CEWS) application.

the purpose of CEWS should be considered by CRA when applying discretion

Taxpayer wins
The Court emphasized that **CEWS** aimed to **provide flexible**, **timely** financial support to employers during a **period of economic uncertainty**. As CRA's decision focused solely on the ability of the taxpayer to avoid the mistake, it **failed** to **align** with the **program's purpose**. The decision-making **lacked responsiveness** to the **practical realities** faced by businesses during the pandemic, where errors in applications were foreseeable. This, in combination with a disagreement over the applicability of the late filing provisions (Subsections 125.7(10) and (16)) led the Court to find CRA's decision **unreasonable**.

The Court ordered the matter to be **reconsidered by a different officer**, emphasizing the need to consider the statutory purpose and fairness principles of the CEWS program.

3 Personal Tax 522(3)

SOCIAL ASSISTANCE – FAMILY BENEFIT

In a July 26, 2024 **Technical Interpretation** (2024-1019091E5, Xiaowan Yao), CRA provided comments on monthly benefits under a program intended to financially support **low-income earners** with **young children**. The program would **require employment or self-employment income** of at least $500 per month, **vary in amount** based on the **number of eligible children** in the household, and be **reduced based on income** above a threshold amount that varied with the number of children.

income-tested payments may increase net income despite being non-taxable

CRA noted that the payments appeared likely to fall within the meaning of **social assistance** and that they were **income-tested**, consistent with previous interpretations of social assistance (see VTN 491(6616) and 493(6705)). As such, the payments would be **included in net income** (Paragraph 56(1)(u)) and **deductible from taxable income** (Paragraph 110(1)(f)).

reporting obligations for payers of social assistance

CRA reiterated their earlier comments that **social assistance payments** are required to be **reported on a T5007** unless they meet specific exceptions (Regulations Subsection 233(2)), none of which appeared to be met by the program in question. It was unclear whether the program was provided by a **government**, a **charity** or some **other organization**; however, the **same rules** would be applicable regardless of the nature of the organization providing the program.

Editors' comment
Although the program discussed in the interpretation appears to resemble some provincial programs, provincial programs are commonly structured as refundable tax credits, similar to the Canada child benefit, and therefore fall outside the rules for social assistance.

MULTIGENERATIONAL HOME RENOVATION TAX CREDIT (MHRTC) – VARIOUS ISSUES

The **MHRTC** provides a **refundable** tax credit for homeowners who renovate their homes to create a secondary unit for a **qualifying individual** (a senior or an adult eligible for the disability tax credit). The **secondary unit** must be **self-contained** with a private entrance, kitchen, bathroom and sleeping area and must meet all applicable local standards to qualify as a secondary dwelling unit (Section 122.92; see VTN 489(6531)).

An October 10, 2024 French **Technical Interpretation** (2024-1015481C6, Eric Paquin) addressed several questions related to the MHRTC.

Nieces, nephews and their spouses or common-law partners

reviewing the legislation to ensure the relevant individual is a qualifying relation

CRA confirmed that, while a **niece or nephew** of the homeowner could be a **qualifying relation** as defined for the MHRTC, the **spouse** or **common-law partner** of a niece or nephew would **not meet** this definition. CRA noted that, although the 2022 Budget description of the proposed MHRTC referred to spouses and common-law partners, the legislation does not, so an amendment would be required to include them.

Sale of dwelling unit

no requirement for ongoing ownership

CRA reviewed a hypothetical situation where an individual **claimed the MHRTC** in respect of a **separate dwelling** within their residence constructed for their **parents**, then **sold** the dwelling **to their parents** in the following year. CRA noted that the **eligible relation** (in this case, a parent) must **ordinarily inhabit** (or intend to do so) **within 12 months** of the end of the qualifying renovation. Provided the other requirements were met, the **sale** would **not disqualify** the individual's MHRTC claim.

Editors' comment

Either the qualifying individual (the person claiming the credit) or their qualifying relation (or certain trusts) must own the eligible dwelling to which the second housing unit is added at some time during the year in which the qualifying renovation is completed, and both individuals must inhabit (or intend to inhabit) the eligible dwelling within 12 months of completion of the renovation.

Principal residence exemption

CRA reiterated their interpretation that a taxpayer who constructs a **secondary unit** that is a self-contained housing unit **eligible for the MHRTC** would **generally** only be able to **designate one of the two housing units** as their principal residence for each calendar year. See VTN 519(7894) for a discussion of a Technical Interpretation which acknowledged the possibility of an exceptional case where two units may be so integrated, both structurally and in usage, to be considered a single housing unit.

LOSSES FROM PERSONAL SCAMS

A June 18, 2024 **Technical Interpretation** (2023-0994641I7, Steve Pannozzi, MTAX) discussed the tax treatment of **losses** resulting from a **personal scam**, as opposed to an investment scam. Two examples of personal scams were provided, as follows:

- a **grandparent scam** that generally involves the fraudster **impersonating a grandchild**, claiming that they are in trouble and **require financial assistance** (e.g. they have been in an accident, have been kidnapped or are stranded abroad); and
- a **phishing scam** where the fraudster **impersonates an entity** (e.g. a financial institution, a utility company or CRA) and attempts to pressure their victim into providing personal or financial information or assets.

CRA noted that there is **no tax relief** specific to **fraud**. In some instances, a **capital** loss or even a **business loss** may result from **investment scams**. However, a loss incurred by a victim of a **personal scam** would generally **not result in a loss** from employment, business, property or a business investment loss as there is **no income-earning activity** related to the loss.

no tax relief for losses from personal scams

The **property** that is **lost** is generally **personal funds** that would likely be considered to be **capital property**. The lost cash would normally be **personal use property** such that any **losses** would be **deemed to be nil** (Subparagraph 40(2)(g)(iii)).

4 Business/Property Income 522(4)

2024 AND 2025 DEVELOPMENTS

A January 8, 2025 **CRA release** (Businesses: Here are the top changes that will affect business taxes in 2025) discussed **some significant changes** that will **affect businesses** in the near future. They include the following:

ensuring firm policies and client communications incorporate all these changes

- the transition for most businesses to **online mail only** (see VTN 520(7931));
- the proposed changes to the **capital gains inclusion rate** being administered by CRA despite not being passed into law (see VTN 520(7927)) ;
- **trust returns** not being required for **bare trusts** for 2024 (see VTN 519(7904));
- the final year of the **CPP enhancement phase-in** occurring in 2025 (see VTN 520(7919));
- deductions against **short-term rental income** not being available if operations were not fully compliant by December 31, 2024 (see VTN 512(7564) and 510(7479));
- a number of **digital service improvements** implemented by CRA (see VTN 519(7885));
- CRA's **administrative** policy related to reporting **dental insurance** coverage on **T4s and T4As** being **extended to 2024** filings (see VTN 521(7956)); and
- changes to the **electronic** filing of **information returns**, including **new online validations** for information return filings (like T4 slips) that identify discrepancies prior to submission (see VTN 521(7971)).

Late-Breaking News: January 31, 2025 – The Department of Finance announced that the **effective date** for the proposed **capital gains inclusion rate** increase from 50% to 2/3 would be **deferred** to **January 1, 2026**. On January 31, 2025, CRA confirmed that they will **administer** the currently enacted **capital gains inclusion rate of 50%** in light of this announcement.

EXTENDING CCA INCENTIVES – FALL ECONOMIC STATEMENT

whether these proposals will be implemented

The 2024 Fall Economic Statement proposed to reinstate the **accelerated investment incentive** and the accelerated first-year CCA for manufacturing or processing **equipment**, **clean energy generation** and energy conservation equipment and **zero-emission vehicles**, all of which began to be phased out in 2024. The reinstatement of the incentives would begin for assets **acquired on or after January 1, 2025**. No draft regulations were provided. The current and proposed rates are summarized below.

	Accelerated investment incentive (subject to half-year rule) (2)		**Manufacturing or processing machinery and equipment, clean energy generation and energy conservation equipment and zero-emission vehicles (1) (2)**	
	Current	Proposed	Current	Proposed
2023	3xnormal CCA	N/A	100%	N/A
2024	2xnormal CCA	N/A	75%	N/A
2025	2xnormal CCA	3xnormal CCA	75%	100%
2026 – 2027	2xnormal CCA	3xnormal CCA	55%	100%
2028 – 2029	normal CCA	3xnormal CCA	normal CCA	100%
2030 – 2031	normal CCA	2xnormal CCA	normal CCA	75%
2032 – 2033	normal CCA	2xnormal CCA	normal CCA	55%
2034 onwards	normal CCA	normal CCA	normal CCA	normal CCA

(1) These rates apply to manufacturing or processing machinery and equipment (class 53 until 2025, class 43 thereafter), clean energy generation and energy conservation equipment (class 43.1 and class 43.2 for property acquired before 2025) and zero-emission vehicles (classes 54, 55 and 56).

(2) Normal CCA refers to the typical first-year CCA claim when no incentive was available, including application of the half-year rule. For example, normal CCA for a class 8 asset is 20% subject to the half-year rule. So, normal first-year CCA is 10%, with the current 2025 rate being 20% (2*10%) and the proposed rate being 30% (3*10%).

In summary, the proposal would **restore** the **enhanced first-year CCA** claims that had started to phase out for assets acquired in 2024, ensuring that the full incentives would apply to assets acquired in the calendar years **2025 to 2029**. The existing scheduled **phaseout** from 2024 to 2027 would instead occur from **2030 to 2034**.

SR&ED – TECHNOLOGICAL UNCERTAINTY

A December 13, 2024 **Tax Court of Canada** case (Manning Canning Kitchens Inc. vs. HMK, 2023-2126(IT)I) considered whether certain **expenditures** in the 2020 taxation year qualified as **scientific research and experimental development** (SR&ED). The central issue was whether the corporation faced **technological uncertainties**.

The taxpayer, a Toronto-based **producer of packaged food** and **drink** products, sought to develop a **shelf-stable**, vinegar-based **cold-pressed juice** drink that could be stored in cans at room temperature. CRA denied the claim, arguing that the activities constituted **routine product development** rather than experimentation aimed at resolving technological uncertainties.

Taxpayer wins
The Court found that the taxpayer **faced genuine technological uncertainty**, particularly regarding **microbial growth** in cold-pressed juice, which led to exploding cans. This uncertainty could **not** be **resolved** through **routine engineering**, as demonstrated by the **novel use of** an all-natural preservative previously applied only to dairy products.

whether a particular approach had already been tested in the field of interest

5 Capital Gains/Losses 522(5)

RESIDENTIAL PROPERTY FLIPPING RULE – VARIOUS ISSUES

Since January 1, 2023, all gains arising from the **disposition of residential property** (including rental property) **owned** for **less than 365 days** are deemed to be **business income unless** a particular **exception** is met (see VTN 501(7049) and 489(6537)).

these deeming rules for short-term property sales

Self-constructed dwelling
In an October 10, 2024 French **Technical Interpretation** (2024-1027801C6, Eric Paquin), CRA indicated that they consider a **dwelling unit** to be **acquired** by the taxpayer on the date when it **becomes habitable.** That date would be a **question of fact**; however, CRA noted running water, electricity and a functional bathroom as examples of requirements to become habitable. This is the **same interpretation** used for the **home buyers' plan** and **first home savings accounts**.

As a result, the required **365-day holding period** would **commence** on the date the property **becomes habitable**. This would apply to **new construction** or to construction of a **replacement home** for a **previous dwelling** on the same land.

reconstruction would restart the 365-day clock

no deemed business income on a change of use

Change of use
In another October 10, 2024 French **Technical Interpretation** (2024-1027831C6, Eric Paquin), CRA indicated that a **deemed disposition** resulting from a **change of use** (Subsection 45(1)) would **not** result in the application of the **property flipping** provisions.

Editors' comment
CRA's reasoning matched that set out in a February 2023 Canadian Tax Focus article (see VTN 499(6962)).

RESCISSION FEES – TAX TREATMENT

An October 7, 2024 **Technical Interpretation** (2022-0944011E5, Matthew Ross, CPA, CA) discussed the tax treatment of a **fee received** from a prospective **purchaser** who **rescinded** their **offer** to **purchase real estate** from the taxpayer. CRA indicated that the **surrogatum principal** would be applied to assess **what** the **payment** was intended to **replace** and whether the **replaced amount** would have been **taxable**.

the nature of the property on which the rescinded offer was made

As it appeared that the **fee** was **intended** to **compensate** for **expenses incurred** by the prospective seller, the **tax treatment** would depend on the **nature** of those **expenses**. That, in turn, would depend on **whether** the **property** on which the offer was rescinded was held on **income or capital account**. If the property was held on **income account**, any **costs** would have been **deductible**, so any **fee** would be **taxable**. If the property was held on **capital account**, then any costs would have been **non-deductible capital expenditures** so any **fee** would be **non-taxable**. Although the costs might have reduced any capital gain on the sale of the property, rescission of the offer meant that no sale would occur.

CRA indicated that the **payer** of the **fee** was **not required** to issue an **information return** regarding the payment.

Editors' comment
CRA's comments were in the context of required rescission payments under BC law; however, the principals set out in their interpretation could be applied to other payments made as a result of a purchase offer being rescinded.

CONDOMINIUM UNIT – PARKING SPACE

A July 15, 2024 **Technical Interpretation** (2023-0990221E5, Troy Neave) considered whether **condominium parking spaces** could qualify as **part of a housing unit** for the **principal residence exemption** (Paragraph 40(2)(b)). Specifically, CRA addressed whether gains from the sale of parking spaces, owned in conjunction with a condominium unit used as a principal residence, could also be eligible.

CRA noted that parking spaces, while not independently considered a "housing unit," may qualify as a **component of a housing unit** (Section 54) if they reasonably contribute to the **use and enjoyment** of the housing unit **as a residence**. In the hypothetical scenario, two parking spaces were considered—one **acquired with the condominium** unit (the "first space") and another **purchased separately** (the "second space"). Both were used for personal purposes by the taxpayer or their spouse.

CRA stated that the **first space** was likely a **component of the housing unit**. CRA then opined that the **second space**, despite being on **separate title** and potentially **sold separately**, could **also qualify** as a component, provided that it contributed to the use and enjoyment of the residence and that it was **owned by the same person** that owned the condominium unit.

the parking space may be part of the housing unit even if acquired separately

DISPOSITION OF FOREIGN PROPERTY – SECURITIES AND REAL ESTATE

A January 19, 2024 French **Technical Interpretation** (2020-0865921E5, Jean-François Benoit) considered the deeming provision that **excludes** an individual's **foreign exchange gains** and losses of **up to $200** on the **disposition** of **foreign currency** that is capital property (Subsection 39(1.1)). First, CRA confirmed its previous position (see VTN 510(7483)) that this provision applies to situations where foreign currency funds in a **chequing or current deposit account** (that allowed the depositor to withdraw the currency on deposit at any time) are converted into another currency or used to make a purchase or a payment.

CRA then noted that this **provision does not apply** to gains or losses from fluctuations in foreign currency value on the **disposition of negotiable instruments** (e.g. shares, mutual funds, bonds) or **real estate**. In these cases, the **$200 carve out** would **not be available** (Subsection 39(1)).

the $200 exclusion does not apply to dispositions of shares or real estate

CAPITAL GAIN OR INCOME

A November 25, 2024 **Tax Court of Canada** case (Rudolph vs. HMK, 2021-370(IT)G) considered issues related to the **characterization of income** and the **deductibility of losses** for the 2007 to 2009 and 2012 taxation years, primarily in relation to investments in **private securities and stock options**. The taxpayer argued that he held both the securities and options on account of income while CRA asserted that they were on account of capital.

Taxpayer wins

The Court concluded that the $966,105 **profit** from the **sale of 910,000 shares and** $548,600 **loss** resulting from the **expiry of stock options were** on account of **income**, not capital. After the share sale, the taxpayer still owned 1,484,000 shares. The Court found that the taxpayer's activity amounted to an adventure or concern in the nature of trade. Factors included the speculative **nature of the shares** and the taxpayer's **active involvement**

the nature of the shares owned and taxpayer's involvement in the underlying business

in the subject corporation. Although there were periods where the investments were held for longer periods, this was simply due to a lack of market for them and inability to sell. It did not indicate that the taxpayer intended to hold them long-term.

Editors' comment
The case did not indicate why the taxpayer argued for income treatment on these gains. It is possible that he was seeking to maintain income treatment upon disposition of the remaining shares or other subsequent transactions.

6 Owner-Manager Remuneration 522(6)

LATE SOURCE DEDUCTIONS – ANNUAL REMUNERATION

penalty increases the later a payment is made

In a November 11, 2024 **Court of Quebec** case (9504206 Canada Inc. vs. QRA, 2024 QCCQ 6981), Revenu Québec (RQ) assessed the taxpayer with a $36,085 **penalty** on the **late payment** of **source deductions** (15% of withholdings paid more than 14 days late, lower rates apply for late payments made within 15 days; Paragraph 59.2(c) of the Tax Administration Act). At the federal level, **comparable provisions** exist; the penalty is 3% for payments made up to 3 days late, 5% for 4 to 5 days late, 7% for 6 to 7 days late, 10% for more than 7 days late and increases to **20%** for a **second offence** in the **same calendar year** (Subsection 227(9)).

large lump-sum remuneration may trigger accelerated source deduction payment deadline

The taxpayer determined its **annual remuneration** to its sole shareholder (a tax lawyer) at the end of **December 2021**. The taxpayer **remitted** the **source deductions** on the expectation that the due date for remitting remained the same as years prior (regular monthly remitter). Therefore, it paid the associated **source deductions** of $240,565 on **January 17, 2022**. However, RQ argued that the remittance timeline was accelerated to the weekly basis threshold, with **withholdings** due **three working days after** the **applicable period** (Section 1015R33 of the Regulations of the Taxation Act). As the taxpayer made the remittance for the month of December, RQ determined that it related to the first pay period of December (December 1 to 7) and should have been **remitted by December 10, 2021**. RQ determined the required weekly remittance timing on the fact that the **average monthly withholding amount** for the comparative period (second preceding year, 2019) was $110,471, which **exceeded** the **$100,000** threshold.

Source deduction payment deadlines for **federal purposes** also use the second preceding year as a default reference year with an option to use the preceding year as the reference (Regulation 108 of the Income Tax Act, see CRA's Employers' Guide – Payroll Deductions and Remittances for a summary of the Federal deadlines).

The taxpayer argued that the **payroll guide** stated that **taxpayers would be notified** if their estimated payment frequency for the following year is not the same as that for the current year and the taxpayer did not receive any notification. The taxpayer also argued that while the taxpayer made both provincial and federal source deductions simultaneously, **CRA did not impose a penalty**. Therefore, RQ should not impose a penalty.

analogous interpretation outside of Quebec

Taxpayer loses
The Court ruled that **source deductions** must be **remitted** based on the **average monthly withholding amounts** which is, if only one payment is made for a calendar year, the amount of that single payment and not the total source deductions divided by 12 months. The Court stated that the taxpayer's **decision** to pay remuneration in a **single lump sum** did **not alter** this computation to determine due dates for withholding payments. The Court also stated that the **taxpayer chose** to determine and pay **remuneration late** in the **year**, which triggered a **shorter deadline** for source deduction remittances under the weekly frequency rules. The Court stated that the provisions in issue are **similar to the Income Tax Act** and had previously **already** been **addressed** in the 2005 Tax Court of Canada case (Manufax Holdings Inc. vs. HMQ, 2004-4547(IT)I; see VTN 291(8025)) and was confirmed by the **Federal Court of Appeal** (Manufax Holdings Inc. vs. HMQ, A-516-05).

tax administration guides do not overrule the law

The Court also stated that the **payroll guide** was **not** a **replacement** for the **legislation**. In the **self-assessment system**, it is up to the taxpayer to ensure that they meet the legislative requirements instead of passively waiting for notice of a change in frequency from the tax authorities.

The Court **upheld the penalty** assessed by RQ on the late payment of source deductions.

Editors' comment
See CRA's remit (pay) payroll deductions and contributions webpage for details on the source deduction due dates based on the remitter type (quarterly, regular or accelerated).

7 Corporate Reorganization 522(7)

GAAR – CRA GUIDANCE

In late December 2024, CRA published a webpage that provided guidance as well as **examples** of situations in which **CRA perceived GAAR** (Section 245) to apply. The purpose of GAAR is to deny tax benefits to any taxpayer that, although complying with a literal reading of the Income Tax Act, is not in compliance with the object, spirit or purpose of the legislation. There is an **interdepartmental GAAR committee** that includes not only representatives

from CRA, but also from the departments of Finance and Justice. In general, any **issue** or transaction **not yet reviewed** by the committee will be **reviewed** before **a GAAR assessment** is made.

Examples
CRA included the following as a non-exhaustive list of examples where they would apply GAAR.

Surplus stripping
Surplus stripping is viewed by CRA as a transaction for the **benefit of the shareholder** that results in the withdrawal or potential **withdrawal of surplus** (retained earnings) of a corporation in a manner that **reduces** the **tax base** and/or a return of capital **in excess** of the amount that reflects the **investment made** with after-tax funds. Three sample scenarios were provided, including PUC averaging (paid-up capital averaging; see VTN 430(3443) for a court case on this topic).

a potential target on surplus stripping transactions

Editors' comment
Although the Department of Finance provided an inter vivos pipeline as an example when releasing the changes to GAAR (see VTN 505(7279)), no such scenario was included on this page.

Creation of an artificial capital loss
This example focused on **creating a capital loss** that does **not** reflect a **true decline** in value of a capital asset **or a reduction** in the taxpayer's overall **economic power** (an artificial capital loss). In particular, the example was a transaction referred to as a **value shift.** This occurs **where** losses are created through a series of transactions designed to shift value from an existing class of shares to a newly issued class. The initial shares would then be sold to a non-affiliated person (see VTN 432(3610) for a court case on this topic).

Avoiding the 21-year deemed disposition rule
This example involved **avoiding the 21-year deemed disposition rule** (Subsection 104(4)) by **indirect transfers** of property **to another trust** or a **non-resident** on a tax-deferred basis by **direct transfers** to a **Canadian corporation**. Such transactions **circumvent** legislation that **prevents** the use of a direct **trust-to-trust** transfer to avoid the deemed disposition (Subsection 104(5.8)).

Editors' comment
Such transactions are also notifiable transactions that require disclosure (see VTN 508(7404)).

Penalty
CRA noted that a **gross negligence penalty** (Subsection 163(2)) may be considered where the taxpayer **disregarded jurisprudence** that indicated that GAAR should apply in similar circumstances.

CRA also reminded that a **new penalty**, effective June 20, 2024, may also apply if the **transaction** (or series that included that transaction) **was not disclosed** to CRA (Subsection 245(5.1); see VTN 505(7279)). The **amount** of this penalty will be **reduced by** the **gross negligence penalty** assessed on the same transaction or series. An exception from the new penalty applies where the taxpayer reasonably relied on the current state of the law and CRA guidance.

GAAR assessments are subject to a penalty

8 Corporate Tax

INTERCORPORATE LOANS

In an October 10, 2024 French **Technical Interpretation** (2024-1023641C6, Nancy Charlebois), CRA addressed the potential implications of an **interest-free loan** between **two corporations** owned by different shareholders. The **question** specifically asked that CRA confirm that **no taxable benefit** would be triggered under either Subsection 15(1) (benefit conferred on a shareholder) or Subsection 246(1) (a much broader provision).

CRA indicated that the question of **taxable benefits** would depend on the **specific facts and circumstances**, but provided some **general comments**.

whether advancing the loan diminished the value of the lender

Shareholder benefit
CRA indicated that **bona fide intercorporate loans** made in the **ordinary course** of the corporation's business would **not generally** result in a **benefit** conferred on a **shareholder**. CRA noted that a **loan** might **not** be **bona fide** where, at the time the **loan** was **advanced**, the **borrower** was **unable to repay** the loan or **provide adequate security**, such that the value of the lender corporation would be diminished by the loan. In such cases, a **taxable benefit** could arise.

whether the parties acted at arm's length

Benefit of any kind
Where a person **confers a benefit** on a taxpayer, directly or indirectly, by any means whatever, and **payment** of the amount of the benefit **directly** from the person to the taxpayer **would be included in** the taxpayer's **income**, the **amount is taxable** to the taxpayer (Subsection 246(1)). CRA indicated that, where neither **the borrower** nor its shareholders held **any interest** in the **lender**, it was likely that a **direct payment** from the lender would **not be income**, so this provision would **not apply**. CRA also noted that the provision would **not apply** to **bona fide transactions** between **arm's length parties** (Subsection 246.1(2)).

Other tax implications
CRA noted that, depending on the facts, **other provisions** might also apply. CRA specifically noted that this could be an **indirect payment** (Subsection 56(2); see VTN 518(7861)) where it was found that the **loan** was **not** made

in **good faith**.

Editors' comment
CRA did not address the implications of a loan to a non-arm's length corporation (see VTN 477(5923)). A November 3, 1989 Federal Court case (Vine (W.J.) Estate vs. Canada, T-2423-85) ruled that the full amount of an interest-free loan advanced between two corporations owned by the same individual was a taxable benefit to the shareholder. This case was not mentioned in CRA's interpretation discussed above.

RDTOH – REDUCTION FOR FOREIGN TAX CREDITS

this reduction to refundable tax related to foreign investment income

An October 10, 2024 **Technical Interpretation** (2024-1023591C6, Nathalie Aubin) discussed the calculation of non-eligible **refundable dividend tax** on hand (NERDTOH) where **foreign tax credits** are claimed to **reduce Canadian tax** on foreign investment income. The **addition** to RDTOH is **generally** 30 2/3% of **aggregate investment income**. However, the addition is **reduced** by the **excess** of non-business **foreign tax credits** above **8%** of **foreign investment income** (definition of NERDTOH in Subsection 129(4)).

CRA noted that the reduction is intended to ensure that the **RDTOH addition** does not exceed **Canadian taxes payable** on the foreign income. CRA confirmed that the 8% computation applies to **all foreign investment income**, even if some of that income did not attract foreign taxes. The question posed to CRA specifically mentioned **taxable capital gains** on **foreign securities** as an example of foreign investment income on which foreign tax seldom applies.

Editors' comment
Canadian-source investment income is underintegrated (i.e. the tax cost of earning this income through a corporation is higher than earning it directly) in all provinces and territories. Where foreign tax credits in excess of 8% erode the refundable portion of tax, the underintegration becomes more costly.

9 CRA

522(9)

UNCERTAIN AND UNLEGISLATED PROPOSALS

On January 6, 2025, Prime Minster Justin Trudeau announced that **Parliament** will be **prorogued** until **March 24, 2025 adding further confusion** on the status of several tax measures that have been proposed but not legislated. **Prorogation** of Parliament in Canada results in the **termination** of a **session**. **Bills** that have not received Royal Assent before prorogation are "**entirely terminated**" and, in order to **proceed** in the **new session**, must be **reintroduced** as if they had never existed.

Capital gains proposals

capital gains and lifetime capital gains exemption proposals included in NWMM

Although not yet law, the proposed **increases** to the **capital gains inclusion rate** and the **lifetime capital gains exemption**, included in a Notice of Ways and Means Motion (NWMM) tabled in the House of Commons on September 23, 2024, will be administered by CRA following established Parliamentary guidelines (see VTN 520(7927)).

Late-Breaking News: January 31, 2025 – The Department of Finance announced that the **effective date** for the proposed **capital gains inclusion rate** increase from 50% to 2/3 has been **deferred** to **January 1, 2026**. The proposed implementation date of the increase to the lifetime **capital gains exemption** to **$1,250,000** (June 25, 2024) and the Canadian entrepreneurs' incentive (January 1, 2025) would **not change**.

reviewing and monitoring CRA guidance on capital gains reporting

Also, on January 31, 2025, CRA released a Tax Tip (Update on the Canada Revenue Agency's administration of the proposed capital gains taxation changes) that provided additional comments related to the **deferral** of the **implementation** of the capital gains inclusion rate increase, as follows:

- CRA confirmed that they will **administer** the **currently enacted capital gains inclusion rate of 50%**;
- CRA will **issue forms** updated to **reflect the 50%** inclusion rate in the **coming weeks**;
- CRA will provide **relief** in respect of filing **penalties and arrears interest** until **June 2, 2025**, for **impacted T1 filers** and until **May 1, 2025** for **impacted T3 filers**;
- CRA will coordinate **corrective reassessments** to reverse the application of the 2/3 rate for **corporations** that have **already filed** tax returns in accordance with the 2/3 inclusion rate; and
- CRA confirmed that they will continue to administer the **proposed increase** to the **capital gains exemption** that would apply to dispositions on or after June 25, 2024.

whether tax preparation software updates will be delayed

Other unlegislated proposals

Many other measures included in the 2024 Fall Economic Statement, the 2024 Federal Budget, the August 12, 2024 draft legislation, and various other announcements have been proposed, but have not yet been included in a NWMM. Such measures appear as though they would not be administered by CRA based on their stated Parliamentary guidelines.

efficiently communicating with staff/clients regarding the status of these proposals

Outstanding proposals include, but are not limited to the following:

- amending the **AMT** for **investment counselling fees**, resource expenses and gains on donations off flow-through shares (see VTN 517(7819));
- expanding the list of expenses recognized under the **disability supports deduction** (see VTN 513(7619));
- introducing **accelerated CCA** for productivity-enhancing assets and purpose-built rental housing (see VTN 517(7821));

- reinstating the **accelerated investment incentive** and **immediate expensing CCA initiatives** (see VTN 522(8071));
- allowing **charitable donations** made from January 1, 2025 to **February 28, 2025** to be **claimed** in the **2024** tax year (see VTN 521(7955));
- expanding the **TOSI** exceptions for certain property that is **inherited** or received as a settlement of rights on a **relationship breakdown** to include substituted property (see VTN 517(7827));
- expanding eligibility for the **rollover of eligible small business corporation** shares (see VTN 521(7955));
- introducing the **Canadian entrepreneurs' incentive** (see VTN 517(7825));
- introducing the **working Canadians rebate** (see VTN 520(7918));
- expanding eligibility for the **Canada carbon rebate rural supplement** (see VTN 521(7955));
- modifying the **Canada carbon rebate for small businesses**, including making it **tax-free**, providing enhancements to smaller CCPCs and limiting the payments for larger eligible CCPCs (see VTN 521(7955));
- extending the timeframe for **realizing losses** to which Subsection 164(6) would apply to the first **three taxation years** of the **graduated rate estate** (GRE; see VTN 517(7839));
- **excluding individuals** from the requirement to **withhold amounts** on certain residential **rental payments to non-residents** (see VTN 517(7840));
- modifying the **trust reporting rules** (see VTN 517(7837));
- expanding and modifying various **clean technology initiatives** (see VTN 509(7439));
- amending the **scientific research & experimental development** (SR&ED) program (see VTN 521(7955));
- expanding the existing **reporting requirements** for **NPOs** in **2026** (see VTN 521(7955)); and
- introducing the **crypto-asset reporting framework** (see VTN 513(7643)).

watching for specific CRA comments on these measures

While CRA has not issued any public comments on these measures, **historical practice** would be for CRA to **administer in accordance with the existing law, not these proposals**.

See the CPA Canada article (Prorogation puts tax legislation in limbo) for further commentary.

In addition, see the Video Tax News-prepared Summary of Recent Tax and Benefit Proposals document that provides concise updates on proposed tax changes, including descriptions, statuses, effective dates and relevant links, to help track legislative developments.

Late-Breaking News: While CRA initially indicated that the introduction of provisions in a NWMM would result in such proposals being administered, they have since announced that they would administer other proposals that have not yet reached that stage, including the following:

- **Charitable donations deadline extension** – On January 23, 2025, CRA released a Tax Tip (**Clarifying** the **CRA's approach** in administering the **proposed** tax measure to **extend** the **2024 charitable donations deadline**) stating that it will proceed with **administering** the **2024 deadline extension** for charitable donations for 2024 tax returns (see VTN 521(7955)). On January 23, 2025, The Department of Finance also released **draft legislation** to implement this provision.
- **AMT** – On January 31, 2025, CPA Canada reported that **CRA** has stated that they will **not administer** the proposed changes to limit the deduction for **investment counselling fees** and to allow a full deduction for **resource expenditures** renounced to individuals who invest in flow-through shares.
- **Disability supports deduction** – On January 28, 2025, CPA Canada reported that **CRA** has stated that they will **not administer** the proposed expanded list of expenses for the **disability supports deduction**.
- **Canada carbon rebate rural supplement –** On January 21, 2025, CRA updated their Personal income tax: What's new for 2024 webpage stating that the **April 15**, 2025 payment would reflect the **proposed expanded eligibility** to the rural supplement as included in the 2024 Fall Economic Statement (see VTN 521(7955)).

April 15, 2025 Canada carbon rebate rural supplement based on proposed expansion in eligibility

TAXPAYER RELIEF – GST/HST REGISTRATION AND REMITTANCE

A December 20, 2024 **Federal Court** case (Demma vs. AGC, T-1214-24) reviewed an application for **judicial review** of CRA's decision **denying penalty and interest relief** related to the taxpayer's **failure** to **register for GST/HST** and **file** the GST/HST **returns** for the 2020 through 2022 years. **CRA notified the taxpayer** on **June 23, 2023** that he was required to register for GST/HST. CRA issued **notices of assessment** on **July 31, 2023** for outstanding balances for 2020, 2021 and 2022, including failure to file penalties and arrears interest (Excise Tax Act Subsection 280(1) and Section 280.1).

Taxpayer loses

The Court found that **CRA's decision** not to provide relief was **reasonable**. The fact that the **payer remitted GST/HST on the taxpayer's behalf** did **not absolve** the **taxpayer** of its **responsibility** to register for GST/HST, file the returns and remit payments. The Court also agreed with CRA that the payer's remittance did **not provide a basis** for providing the taxpayer with relief.

no relief where GST/HST was remitted by another party

reason for requesting relief must align with the facts

The Court noted that CRA was also **not required** to consider the taxpayer's **"prompt registration** and **filing"** of his overdue returns (the date the taxpayer registered and filed was not provided in the ruling) in its decision as **over a month had passed** after he was informed of his obligation to register and file returns. Further, **whether** the taxpayer "**acted quickly to remedy** the omission or the delay in compliance" is **only considered** if "**circumstances beyond [the taxpayer]'s control**" prevented them from complying with the Act. In this case, the taxpayer admitted that the issue arose due to human error. There was, therefore, no extraordinary circumstance, as CRA explained that "human error...[is] considered within [the Applicant's] control."

LATE OBJECTIONS – ROUND-UP

A **notice of objection** is required to be filed within **90 days** of the **date of the applicable assessment** (Subsection 165(1) and Excise Tax Act Subsection 301(1.1)). The assessment is deemed to have been made on the date that it was sent (Subsection 244(15)). Where this deadline is missed, a taxpayer can **apply for an extension** to file a notice of objection within **one year** of the original deadline to file it (Paragraph 166.2(5)(a) and Excise Tax Act Paragraph 303(7)(a)). Where **CRA refuses** to allow the extension, their decision can be **reviewed by the courts**.

Some recent court cases regarding late objections are discussed below.

the importance of a timely objection even if matters are being discussed with CRA

Ongoing discussions with CRA
In a September 12, 2024 **Federal Court of Appeal** case (Antrobus vs. HMK, A-62-24), the taxpayer testified that she had been **providing information to CRA** as requested and **believed** that the matter in question (denial of GST/HST New Housing Rebates) was **being addressed** by CRA. The Court expressed **sympathy for the taxpayer** and **concern** that hundreds of **similar cases** come before the Tax Court every year. However, the **Court** could **not modify** the legislated time limits.

two days late is too late; apply for an extension

Objection two days late
A November 14, 2024 **Court of Quebec** case (Perreault vs. QRA, 2024 QCCQ 7571) found that the taxpayer's **objection** that was **filed two days late** was not acceptable. As the late objection was **not treated** as a request for an **extension** and the taxpayer did **not make** an **application** for an **extension,** the application was dismissed.

AUTOMATIC TAX FILING? – FALL ECONOMIC STATEMENT

The 2024 Fall Economic Statement included several proposals to **implement automatic tax filing** for individuals, including amending the Canada Revenue Agency Act to **mandate** the **Minister** of **National Revenue** to **simplify and automate individual tax filing**.

automation of simpler returns for lower-income Canadians

Lower-income Canadians
Legislation would be developed to **enable CRA** to **automatically file tax returns** for certain **lower-income Canadians** beginning as soon as the 2025 tax year. Eligible individuals would receive a **pre-filled return** based on CRA data, with the **option** to **review**, **modify** or **opt out**. If no action is taken, CRA would file the return on their behalf.

Middle-class Canadians
The government would explore **automatic tax filing** for **middle-class** Canadians with **simple tax situations**. This could include **non-filers** or those with a gap in their filing history, modest-income families who do **not claim most deductions or credits** and modest-income families who do not have the funds for a paid tax filing service.

Free tax software
The government would consider ways to improve access to **free online tax software** for Canadians, especially for those with **simple and straightforward tax situations**.

SOLICITOR-CLIENT PRIVILEGE (SCP) – ACCOUNTANT

Solicitor-client privilege (SCP) protects **confidential communications** between a **lawyer and their client**, provided the communication is for the purpose of **obtaining or providing legal advice**. No such privilege exists between an accountant and their client. Documents containing accounting, business or policy advice are not privileged. There is **no SCP** where the **accountant** gives **original and independent tax advice** to either the lawyer or the client, even if the lawyer has overall responsibility in providing advice for a transaction. However, **SCP applies** where an **accountant** acts as a **representative** or agent for a client in **obtaining legal advice** from a **solicitor**.

specifics to determine whether the accountant is an agent of the client

SCP maintained
A December 18, 2024 **Tax Court of Canada** case (Stack et al. vs. HMK, 2021-2270(IT)G) confirmed that the **use** of an **accountant** as a **representative** in the course of obtaining legal advice or legal assistance for a client does **not nullify** the otherwise **privileged information**. As there was a **clear link** between the **accountant's involvement** as an **agent** of the client and the **legal advice from the lawyer**, emails between the lawyer and accountant (as an agent of the taxpayer) were protected.

See the December 18, 2024 TaxLawCanada.com article (Tax Court Rejects the CRA's Attempt to Obtain Documents Protected by Solicitor-Client Privilege: Stack v The King, 2024 TCC 137) for further commentary.

whether the accountant is providing legal advice

SCP not maintained
A September 20, 2024 **Tax Court of Canada case** (Coopers Park Real Estate Development Corporation vs. HMK, 2014-4504(IT)G) found that several documents were **not protected** by **SCP**. In some cases, it was because the document on its face contained insufficient information, as neither the author nor the recipient was listed, and there was **no clear connection** to the **provision of legal advice**. In other instances, the **accountant provided** independent **legal advice** beyond the scope of its role as agent under the engagement letter. In addition, the accountant provided legal advice to a law firm outside the specific solicitor-client relationship established in the engagement letter.

Editors' comment
See VTN 515(7729) for a discussion on steps practitioners can take to maintain solicitor-client privilege. Also, see VTN 502(7094) for an article discussing how accountants can inadvertently disclose privileged information to CRA when supporting a deduction claimed, such as legal expenses.

10 Estate Planning 522(10)

RIGHTS OR THINGS – TIMING OF ELECTION

An October 10, 2024 French **Technical Interpretation** (2024-1023291C6, Michel Ostiguy) discussed the receipt of a **right or thing** after the **final personal tax return** has been filed and the **deadline** for electing to file a **separate return** to report rights and things has **expired**. The specific **right or thing** discussed was a pay equity settlement that had been reached prior to the taxpayer's death but was **received more than 90 days** after the **final personal tax return** was **assessed**.

filing a rights and things return before the deadline

CRA noted that the **election to file** a separate **rights and things return** must be made **no later than one year after** the **date of** the taxpayer's **death** or, if later, the **90th day after** a **notice of assessment** is sent in respect of the taxpayer's tax for the **year of death** (Subsection 70(2)). Therefore, CRA stated that the executor's only option was to **amend the terminal return** to report this **additional income**.

CRA further indicated that where the **exact amount** of a right or thing is **not known** within the time limits for the election, the executor could **file an elective return** based on an **estimated amount** to be amended as necessary when the exact amount is known.

Editors' comment
CRA's response does not appear to consider that the assessment-based deadline for electing to file a rights and things return is 90 days after the sending of any notice of assessment for the year of death, not limited to an initial notice of assessment. Past CRA documents (for example, Technical Interpretation 2017-0709461E5) have noted the deadline as being 90 days after the mailing of any notice of assessment or reassessment for the year of death. It is unclear why CRA did not discuss the possibility of filing a rights and things return within 90 days of a reassessment issued to adjust the final personal tax return to report the additional income.

RRSP OVERCONTRIBUTIONS OVER MANY YEARS

ensuring all RRSP contributions get reported

A December 10, 2024 **Federal Court** case (Verrico vs. AGC, T-1386-23) addressed an application for judicial review of CRA's decision to **deny penalty tax relief** on **excess RRSP contributions**. The taxpayer **first overcontributed** in **2006**, after **failing to report contributions** on his 2004 and 2005 tax returns. He had also **late filed** his 2005, 2015, 2016 and 2018 **tax returns**.

The taxpayer argued that he was **unaware** of the **overcontributions** until 2014 or 2015. He then engaged **professional assistance** resulting in **reassessments** for 2004, 2005, 2008 to 2012 and 2014 in July 2016. He received **notice** of a remaining **overcontribution** in late 2018 and **withdrew** this amount in early 2019, following which he **believed** all matters were **resolved**. Although a number of **notices** of **balances owing** were issued subsequently, the taxpayer was **told** that there was **no balance** when he **contacted CRA**. In September **2021**, he became aware of **T1-OVP returns**, on which the **outstanding balance** had **accumulated**.

the ten-year limit for taxpayer relief

CRA **denied relief** for the 2007 to 2011 tax years on the basis that the **taxpayer's application** was received **over ten years** after the end of those years, such that **taxpayer relief** was **not available**. CRA **denied relief** for the subsequent years on the basis that the taxpayer's **late filings** and **failure to report contributions** caused the errors and were **his responsibility**. Further, he had received **multiple assessments of T1-OVPs**, personal tax assessments **reflecting excess contributions** and several **RRSP compliance letters**.

Taxpayer wins
The Court noted that CRA provided a **244-page report** as evidence supporting their denial of relief. However, CRA provided **no explanations** of the document in the hearing, leaving the Court **unable** to confidently **understand and interpret** it. This **prevented** an appropriate **review** of the **reasonableness** of the decision.

the timing of relevant CRA correspondence

The Court expressed **additional concerns** with the information provided. CRA's claim that **overcontributions** were **reported** on **annual assessments** was **not supported** by their evidence, which included only **reassessments** for various years from 2004 to 2014 **issued on July 14, 2016**, which did **not support timely notice**. Further, CRA had **not addressed** the taxpayer's concerns expressed regarding the **denial** of relief for **2011 and earlier years**.

As the Court **could not conclude** that CRA's **decision was reasonable**, judicial review was **granted** and the matter **referred back** for review by a new decision maker.

REGISTERED PLANS – VARIOUS ESTATE PLANNING ISSUES

A December 10, 2024 All About Estates article (Nuances with registered plans: Things to remember, Gowling WLG LLP) discussed some **tips and traps** in estate planning for **registered plans**.

designating a spouse as a successor holder

TFSA – successor holder
Appointing a **successor holder** who must be a surviving **spouse or common-law partner** will allow the **deceased's TFSA to transfer** to the successor holder's TFSA **without reducing** the survivor's **contribution room**. The designation can be made in the **TFSA contract** in some cases or in the **will**. The article noted that **alternate beneficiaries** can also be named to address the possibility of being **predeceased** by the successor.

appointing a successor subscriber if the RESP has only one

Registered education savings plans (RESP)
Designated **beneficiaries** of an **RESP** do **not receive** funds remaining on **death** of the subscriber. Rather, they are beneficiaries **during the survivor's lifetime**. Setting up RESPs with **joint subscribers** or **appointing** a **successor subscriber** would permit the **RESP** to **remain** intact **after** the individual's **death**.

Designated gifts
Often, the **last spouse to die** (the taxpayer) provides for their assets to be **divided equally** between their **children**, with the share for a **child who predeceases** the taxpayer to flow to **the deceased child's own children** (i.e. the taxpayer's grandchildren). It is also common for the taxpayer to **designate their children** as **beneficiaries** of **registered plans** so that these funds are distributed outside the estate.

However, if **a child predeceases** the taxpayer, the **registered accounts** will be only divided and paid directly to the **surviving children**. In such a case, the **grandchildren** (that is, the children of the deceased child) **would not receive** their intended share of these funds as they were **not designated** as **beneficiaries**.

The article suggested that the taxpayer's **will** provide for a **balancing of the distributions** under the estate to direct additional funds to the grandchildren whose parent predeceases the taxpayer.

a clause to require accounting for assets that flow outside the estate

A February 29, 2024 Miller Thomson article (Decoding afterlife finances: Understanding the tax implications for RRSPs, TFSAs and FHSAs upon the holder's death, Hillary Linden and Sierra Gaines) provides a summary of the more basic tax issues arising on death of a plan holder.

PIPELINE ROUND-UP

A **pipeline plan** is commonly undertaken where there has been a **deemed disposition** of shares resulting in an **increased adjusted cost base** (ACB). The pipeline converts the increased ACB **into a shareholder loan**. The intent is to ensure that the tax on the capital gain is the only level of tax by **avoiding the need to pay dividends** later to extract corporate equity. While this type of planning typically arises from deemed dispositions on the death of a taxpayer, it may also occur in other scenarios, such as on the deemed disposition of shares held by a trust on its 21st anniversary.

Due to the **complex rules** surrounding these reorganizations, **pipelines** are common subjects of **Advance Tax Rulings** from CRA. Rulings from CRA can form a useful framework for planning and provide some insights into CRA's interpretation of these provisions. CRA is typically asked to rule that the proposed transaction would not result in a deemed dividend (Section 84.1 and Subsection 84(2); see VTN 479(6042) and VTN 482(6203), respectively) and that the general anti-avoidance rule (GAAR; Section 245) would not apply. In the scenarios described below, CRA ruled that these anti-avoidance provisions would not apply.

the possibility of an advance ruling to reduce risk of CRA challenge

- In a 2023 French Advance Tax Ruling (2023-0986521R3), CRA considered a pipeline **planned** to convert **increased ACB** arising on a **deemed disposition** of shares held by a **trust** that was approaching its **21st anniversary**. **Promissory notes** issued in the course of the pipeline would first be used to **fund the taxes** on the deemed disposition, with the remainder being **distributed to beneficiaries**.

tax advantaged access to corporate funds after a deemed disposition

- In a 2023 Advance Tax Ruling (2023-0980101R3), CRA considered a pipeline in which the gain was recognized upon death and then the assets moved to a **spousal trust**. Details of shareholder loan **repayment** resulting from the transfer of shares were included as follows:
  - no more than 25% of the principal within three months;
  - no more than 50% within six months;
  - no more than 75% within nine months; and
  - full repayment after two years.

this repayment schedule was acceptable to CRA

11 Charities/NPOs 522(11)

DONATION BY SPOUSE PRIOR TO MARRIAGE

donations prior to spousal relationships may be eligible for claim by the new spouse

A September 5, 2024 **Technical Interpretation** (2024-1022711E5, Alison Campbell) stated that a **spouse or common-law partner** may claim a **charitable donation tax credit** (Section 118.1) for a **gift** made **by their partner** in the current or **preceding five years**, even if the donation was **made prior** to the commencement of their **spousal relationship**.

Further, CRA reminded that they **may reassess** a taxpayer's returns within the **normal reassessment period** (three years from the date of assessment; Subsection 152(4)) or beyond this period if requested within **ten calendar years** of the relevant tax year (Subsection 152(4.2)). These provisions would apply to requests to claim donations made by a spouse.

12 Relationship Breakdown 522(12)

FHSA – PROPERTY DIVISION

division of FHSA on marital breakdown

An October 10, 2024 French **Technical Interpretation** (2024-1023301C6, Michel Ostiguy) discussed the tax implications of a **first home savings account** (FHSA) to be **transferred** to a **spouse** or former spouse. CRA noted that a **tax-free transfer** to the **spouse's FHSA** is possible where the spouse is entitled to the amount under a **court order** or a **written agreement** in settlement of **rights arising** from the **breakdown of the marriage** or common-law partnership (Subsection 146.6(7)). Any such transfer **cannot exceed** the fair market value of the **transferor** spouse's FHSA, **less** any **excess FHSA amounts** (defined in Subsection 207.01(1)). Neither spouse's ability to make additional FHSA contributions in the future would be affected.

CRA noted that if the spouse **has no FHSA** and **does not** meet the **requirements** to open an FHSA, **no transfer** can be made **to** an **FHSA**. The funds **could be transferred** instead to the spouse's **RRSP** or **RRIF**.

13 International

US CORPORATE TRANSPARENCY

A December 5, 2024 STEP article (US court issues nationwide injunction blocking Corporate Transparency Act) discussed a recent Texas Court's **temporary national injunction** blocking the requirement to **report beneficial ownership information** of **corporations** (see VTN 521(7982), 512(7591) and 508(7418)).

monitoring for further developments if not filing voluntarily

As a result of the decision and an unsuccessful challenge of it, **FinCEN** updated its FAQ on these rules in late December to state that "reporting companies are **not currently required** to **file beneficial ownership information** with FinCEN and are not subject to liability if they fail to do so while the order remains in force." It also noted that reporting companies may continue to **voluntarily submit** beneficial ownership information reports. These statements remained on the FAQ as of January 22, 2025. However, a subsequent STEP article (US beneficial reporting duty blocked for now, but Supreme Court intervention imminent) noted that the **injunction** will **likely stay in place** pending a decision from the Supreme Court that is already in progress. The article noted that **if FinCEN succeeds** at the **Supreme Court**, any **extension** of the filing deadlines could be **limited to as little as a further two weeks** based on similar past situations.

Editors' comment
Due to hearings before several different US Courts, the status of this filing requirement is changing on a frequent and rapid basis. If potentially subject to these rules, consider monitoring developments closely and perhaps making a voluntary filing for greater protection from the significant late filing penalties.

Late-Breaking News: January 24, 2025 – **FinCEN** updated its **beneficial ownership information** webpage to state that US Supreme Court has granted the government's motion to stay a nationwide injunction issued by a federal judge in Texas. However, as a separate nationwide order issued by a different federal judge in Texas (Smith v. U.S. Department of the Treasury) still remains in place. As such, **reporting corporations** are still **not currently required to file beneficial ownership information** with FinCEN despite the Supreme Court's action in Texas Top Cop Shop.

US TAX CREDIT AGAINST INVESTMENT TAX

A December 18, 2024 Canadian Accountant article (Court allows Canada-US tax treaty credit against investment tax, Allan Lanthier) discussed a recent US Court of Federal Claims case (Bruyea vs. US, No.23-766T) that found that the **Canada-US Tax Treaty** provides a **credit** for **foreign taxes paid** on income subject to the **Net Investment Income Tax** (NIIT), even when such a credit is not explicitly allowed under the US Internal Revenue Code. The taxpayer was a US citizen resident in Canada.

The **NIIT** imposes a 3.8% tax on investment income exceeding specific thresholds. In the Court case discussed, although the taxpayer's **regular US tax liability** was **offset** by **foreign tax credits** (for Canadian taxes paid), the IRS asserted that the taxpayer's **NIIT liability** of $263,523 could **not be reduced by foreign tax credits** for Canadian taxes in excess of the regular US taxes payable.

The taxpayer attempted to **claim a refund** under Article XXIV of the Canada-US Tax Treaty, arguing that the Treaty **overrides** the limitations of the **US tax code**. If successful, there was sufficient Canadian tax paid to offset the NIIT.

The **Court ruled in favour of the taxpayer**, citing principles of treaty interpretation. It also noted that the **last-in-time rule** (statutes overriding earlier treaties) did not apply, as Congress did **not explicitly deny** treaty-based credits in the NIIT provisions.

a foreign tax credit may be available even if not specifically permitted by the Internal Revenue Code

The article also noted that while the taxpayer won the case, the US government is likely to appeal, and similar cases involving other treaties are also under review.

AVERAGE FOREIGN EXCHANGE RATE – STRIPPED COUPON BONDS

An October 10, 2024 French **Technical Interpretation** (2024-1023251C6, John Fowler) considered whether an **average exchange rate** may be used to calculate **deemed accrued interest** on **stripped coupons** denominated in **foreign currencies**. The CRA concluded that an average rate could **generally be accepted** provided it produced a reliable approximation of income as calculated using daily exchange rates and met the following conditions:

these conditions must be met to use the average exchange rate

- the foreign currency amounts must be **relatively stable** and **evenly distributed** over the period;
- income **accruals** must be **frequent** and **sufficiently spread** over the period;
- **exchange rates** must **not fluctuate significantly** during the period; and

- the taxpayers must **apply** the average **rate consistently** across applicable periods.

CRA noted that deemed accrued interest on stripped coupons typically **satisfies** the **first two conditions** because the interest accrues evenly over time (as calculated under Subsections 12(3), (4), and (9) and Regulation 7000(2)). Taxpayers must **ensure exchange rate stability** (third condition) and **consistent application** of the average rate (fourth condition). If exchange rates fluctuate significantly, the average rate cannot be used for that period, though it may remain applicable in other periods where conditions are met.

RETIREMENT COMPENSATION ARRANGEMENTS

the complexities of allocating income between multiple countries

A December 9, 2024 **Tax Court of Canada** case (Martin et al. vs. HMK, 2020-1733(IT)G) considered how exclusions of employer contributions to **retirement compensation arrangements** (RCA) operate for non-resident employees (Subparagraph 6(1)(a)(ii)). The taxpayers were two professional baseball players who performed a split of **40%** of their **duties in Canada** and **60% in the US**. The taxpayers argued that the **RCA contributions** should be **excluded from Canadian-sourced** taxable income **after the allocation** of total income between jurisdictions (Paragraph 115(1)(a)), while CRA argued for their exclusion before allocation.

Taxpayers win

The Court found that the **RCA contributions** were part of the total **income from employment**. Although the earnings came from a single source, it was **deemed** to have been from **two sources**, the portion sourced in Canada and that sourced outside (Subparagraph 4(1)(b)). In the case of non-residents, **only** the **Canadian source income is taxable in Canada** (Section 115). Once the Canadian sourced income is determined, the Income Tax Act excludes RCA contributions from net and taxable income (Subparagraph 6(1)(a)(ii)). As such, **100% of** the **RCA contributions** were **completely excluded** from **Canadian source income**. To support this, the Court noted that **RCA contributions** were **determined** by the **actuary** based only on the portion of **earnings sourced in Canada**. Further, Canadian refundable tax paid by the RCA applies to the entire contribution and the withdrawals would be fully taxable in Canada (see VTN 501(7056) for more information on RCAs).

RCA deduction applied only to income sourced in Canada

In other words, income in this context does not mean income as calculated under the Income Tax Act. First, income is determined without applying income tax provisions (such as excluding employer RCA contributions). The portions sourced within and outside Canada are then determined. Only then are adjustments under the Income Tax Act (such as the exclusion of employer contributions to an RCA) applied against the Canadian-source income.

14 GST/HST

522(14)

PAYMENT OF GST/HST TO SUPPLIER – SET-OFF?

In a December 13, 2024 **Supreme Court Of British Columbia** case (Trevali Mining Corporation (Re), 2024 BCSC 2252) the taxpayer (TMco), represented by the Receiver (as the taxpayer was granted creditor protection) sought an **Order** from the Court **requiring** a **customer** to **pay approximately $1.5 million of GST/HST** owing to TMco. The customer argued that it was **entitled** to **offset** the **GST/HST it owed** to TMco **against other liabilities** TMco owed to it. The Receiver argued that the set-off was not available.

The **recipient** of a **taxable supply** made in Canada **shall pay GST** (and in participating provinces, tax in respect of the supply calculated at the rate relevant for the province) **to His Majesty in right of Canada** on the value of consideration for the supply (Excise Tax Act Subsections 165(1) and (2)). The supplier of the good acts as an agent of **His Majesty in right of Canada** to collect amounts payable in respect of the supply (Subsection 222(1)).

GST/HST cannot be offset against other liabilities between a customer and supplier

Set-off unavailable
The **Court ruled in favour** of **TMco,** finding that a **separate set-off agreement** could **not protect the customer** from **paying TMco** the $1.5 million in **GST/HST**. That is, the customer was required to pay the GST/HST regardless of the fact that TMco had a balance owing to the customer. The Court also ruled that the customer must **pay any interest and penalties** resulting from **TMco's failure** to **file** and **pay the taxes**, emphasizing that these arose not just from failing to file tax returns but also from the customer failing to remit GST to TMco, which prevented TMco from paying CRA.

15 Did You Know...

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ALBERTA – MOVING BONUS

The Alberta moving bonus (also referred to as the attraction bonus) provides a **$5,000 refundable tax credit** to **individuals** who **moved to Alberta** from **May 1** to **December 31, 2024** and **work** in **eligible occupations** (see VTN 515(7740)). Individuals would have to reside in Alberta for at least 12 months at the time of their application, be tax residents in Alberta on December 31, 2024, **work full-time** as employees or self-employed individuals in a **prescribed occupation** (of 62 occupations that primarily focus on construction-related fields and trade) and meet **additional eligibility criteria**.

Applications can be submitted online **commencing May 1, 2025**. Applications will be assessed on a **first-come, first served basis**. The application portal may close at any time, such as when **all program funds have been allocated**.

identifying and notifying potential applicants in the T1 process

ALBERTA – WITHDRAWAL FROM CPP?

A December 23, 2024 Advisor.ca article (Proposed Alberta Pension Plan not entitled to 53% of CPP assets: OSFI, Jonathan Got) **summarized** some of the **key findings** from the position paper released by the Office of the **Chief Actuary** on December 20, 2024. The paper reported conclusions of an **expert panel** of actuaries that reviewed **what Alberta** would be **entitled to if it left the CPP**. The panel concluded that Alberta would get **between 20% and 25%** of the **CPP assets**, amounting to between $120 and $130 billion. This contrasts a previous report by LifeWorks released in 2023, estimating that Alberta would get around 53% of the CPP assets or about $334 billion. See VTN 508(7385) for further comments on Alberta considering withdrawing from the CPP.

whether Alberta would pursue this option

NOVA SCOTIA – TRANSITION TO 14% HST

On December 20, 2024, the Nova Scotia government published guidance on **transitional rules** to **reduce** the **HST** from 15% **to 14%**, effective **April 1, 2025**.

In general, the **transitional rule** to determine **which tax rate applies** is based on the **earlier** of the **invoice date** and **when** the **transaction** is **paid**. If the transaction is **payable before April 1**, the HST of **15%** applies; if the transaction is **payable after April 1**, the HST rate of 14% applies.

updating systems to consider the change

UPCOMING COURSES

Personal Tax Update 2025

Another personal income tax season is fast approaching, and so is the 43rd annual **Personal Tax Update**. **Virtual live and in-person** 7-hour presentations will be offered from late January to early March 2025 **by geographic location**, allowing us to deliver targeted and practical content. Limited spaces are available for in-person and virtual live offerings, so register early to secure your first choice. If you prefer to **view on your schedule**, consider registering for our **pre-recorded sessions** running from **early March** through the month of April.

registering quickly as some courses are already sold out

Join us for one full-day or two half-day (virtual live only) sessions for the effective and efficient completion of 2024 returns, and planning considerations for the coming year. Highlights include the **compliance and planning implications** of the proposed changes to the **capital gains inclusion rate** on tax returns prepared for 2024 and planning for future years, the new **alternative minimum tax** rules and the **denial** of **expenses**

for **short-term rental** activities.

Newbies to Ninja – Personal Tax, 2025 Edition

Help your **newer preparers** enhance their ability to **efficiently and accurately** prepare personal tax returns with the updated version of this **basic T1** general **preparation course**. In addition to **core topics** like employment, business, investment and rental income, this concise pre-recorded online 3-hour topic-by-topic course incorporates **changes** including evolving **CCA incentives**, the **denial of expenses** for non-compliant **short-term rental** activities, this year's newly introduced or modified credits and deductions and, of course, the **changes** to the **capital gains inclusion rate**. Used in conjunction with your firm's presentation of administrative procedures, newer preparers will be preparing T1s and identifying **areas of concern** and **planning opportunities** like tax ninjas!

ensuring your team is ready for personal tax season

16 Appendix 522(16)

APPENDIX A

Additional Video Tax News Resources and Recently Released CRA Publications and Forms

Video Tax News Resources

- Video Tax News Members Portal and Newsfeed
- Video Tax News Members Portal – A How To Use The Portal Video Tutorial (6 mins)
- Summary of Recent Tax and Benefit Proposals
- Tax on Split Income (TOSI) – Quick Reference Chart
- Underused Housing Tax (UHT) – Quick Reference Chart
- Selected Temporary CCA Incentives – Quick Reference Chart
- Life in the Tax Lane – 10 Minute Monthly Podcast/Video
- Technical Interpretations

CRA Guides/Publications

- NOTICE338 Information Requirements for Basic Grocery Ruling Requests
- P102 Support Payments
- RC4064 Disability-Related Information – 2024
- RC4065 Medical Expenses - 2024
- T4044 Employment Expenses 2024 - Includes forms T777, TL2, T2200 and GST370
- T4058 Non-Residents and Income Tax
- T4144 Income Tax Guide for Electing Under Section 216
- T4145 Electing Under Section 217 of the Income Tax Act
- T4155 Old Age Security Return of Income (OASRI) Guide for Non-Residents
- 5013-G Income Tax and Benefit Guide for Non-Residents and Deemed Residents of Canada
- T4055 CANCELLED Newcomers to Canada
- P-257 Application of the GST/HST to New Home Warranties Issued by Insurers
- 31-0 GST/HST Memorandum 31, Objections and Appeals
- T4130 Employers' Guide - Taxable Benefits and Allowances
- NEWS118 Excise and GST/HST News – No. 118
- 3-3-5 Place of Supply in a Province – General Rules for Intangible Personal Property
- 3-3-5-1 Place of Supply in a Province - Specific Rules for Intangible Personal Property
- ED200-1 Licensing requirements for manufacturers of beer or malt liquor, wort, yeast, or malt products

- EDM10-1-6 Completing an Excise Duty Return - Wine Licensee
- RC4052 GST/HST Information for the Home Construction Industry
- T4001 Employers' Guide - Payroll Deductions and Remittances
- RC4157 Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary
- NOTICE340 Questions and Answers about the GST/HST tax break for all Canadians
- T4008 Payroll Deductions Supplementary Tables (all provinces and territories)
- T4015 T5 Guide - Return of Investment Income 2024

CRA Forms/Statements/Returns

- T1 Package Numerous personal tax forms including the 2024 Income Tax and Benefit Return
- RC226 Application for a Tax-Free First Home Savings Account Identification Number
- RC154 Schedule of Required Information for the Canada Revenue Agency
- RC236 Application for a TFSA (Tax-Free Savings Account) Identification Number
- T1024 Election to Deem a Proportional Holding in a Qualified Trust Property
- T2214 Application for Registration as a Deferred Profit Sharing Plan
- T2217 Application for Registration as a Registered Investment
- T244 Registered Pension Plan Annual Information Return
- T3F Investments Prescribed to be Qualified Information Return
- T3SCH130 Excessive Interest and Financing Expenses Limitation
- T1-OVP-ALDA 2024 Individual Tax Return for Excess Transfers to Purchase an ALDA
- CPT13 Application for an Employer Resident Outside Canada to Cover Employment in Canada Under the Canada Pension Plan
- T2183 Information Return for Electronic Filing of Special Elections
- CPT1 Request for a CPP/EI Ruling – Employee or Self-Employed?
- CPT8 Application and Undertaking to Cover Employment Outside Canada under the Canada Pension Plan
- GST17 Election Concerning the Provision of a Residence or Lodging at a Remote Work Site
- GST22 Real Property - Election to Make Certain Sales Taxable
- CPT124 Application to Cover the Employment of an Indian in Canada under the Canada Pension Plan whose Income is Exempt under the Income Tax Act
- CPT17 Application to Certify a Religious Sect or a Division of it so Members can Apply to Exempt their Self-Employed Earnings from the Canada Pension Plan
- RC325 Address change request
- GST159 Notice of Objection (GST/HST)

- RC45 Notice of Objection (Softwood Lumber Products Export Charge Act, 2006)
- T2060 Election for Disposition of Property Upon Cessation of a Canadian Partnership
- TX19 Asking for a Clearance Certificate
- GST31 Application by a Public Service Body to Have Branches or Divisions Treated As Eligible Small Supplier Divisions
- T2157 Direct Transfer from a Registered Plan to Purchase an ALDA
- T4A-RCA-SUM Summary of Distributions from a Retirement Compensation Arrangement (RCA)
- T137 Request for Destruction of Records
- T2107 Election for a Disposition of Shares in a Foreign Affiliate
- T2SCH54 Low Rate Income Pool (LRIP) Calculation
- T4A-RCA Statement of Distributions from a Retirement Compensation Arrangement (RCA)
- T1036 Home Buyers' Plan (HBP) - Request to Withdraw Funds from an RRSP
- E413 Notice of Objection (Excise Tax Act)
- E414 Notice of Objection - Purchaser
- RC471 Home Buyers' Plan (HBP) - Cancellation
- T3-RCA Retirement Compensation Arrangement (RCA) Part XI.3 Tax Return
- T400A Notice of Objection - Income Tax Act
- T185 Electronic Filing of a Pre-authorized Debit Agreement
- T183 Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return
- T5 Statement of Investment Income
- T5SUM Return of Investment Income

APPENDIX B

Moving, Medical and Northern Residents Deduction – Meal and vehicle rates used to calculate travel expenses for 2024 (simplified method)

The following rates are reproduced from CRA's webpage.

Province or territory	Cents/kilometre
Alberta	54.5
British Columbia	57.5
Manitoba	54.5
New Brunswick	58.5
Newfoundland and Labrador	60.5
Northwest Territories	70.0
Nova Scotia	59.5
Nunavut	70.5
Ontario	60.5
Prince Edward Island	57.5
Quebec	58.0
Saskatchewan	55.0
Yukon	71.5

Multiply the number of kilometres by the cents/km rate from the chart below for the province or territory in which the travel begins.

Simplified Claims - Meals:
If the simplified method is used, claim in Canadian or US funds a flat rate of $23 per meal, to a maximum of $69 per day (sales tax included) per person, without receipts. Even though receipts are not required, some documentation may be needed to support the claim.

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