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2025 Update on Taxation

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2025 Tax Update

Fairmont Waterfront Vancouver
October 22, 2025

Can a phoenix rise from the ashes?





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Customs and Sales Tax Update

Rosemary Anderson
Noah Sarna

Agenda

- Customs Update
- GST Caselaw: *Medsleep Inc. v. The King*
- GST: Purpose-Built Rental Housing Rebate
- Underused Housing Tax & Hotel Units

Customs Update

- Amount payable = Rate X Value- duty relief
 - Rate- based on classification and origin
 - Value- based on value for duty rules
 - Surtaxes- based on classification, marking rules and date of shipment/ import

Customs Duties

- Owner and importer/importer of record liable for payment of duties to CBSA
 - Issue: accuracy of data from exporter
- Financial burden based on contract
 - Confirm contract terms- usually INCO Terms

Customs Duties/ Surtaxes

- Duty Rate
 - Tariff Classification
 - Harmonized System based on international and Canadian rules of interpretation
 - Useful to check reasonableness of classification being used by customs broker
 - Origin
 - where something is made not where it is purchased
 - Typically based on trade agreement (such as CUSMA)
 - Typically requires certificate of origin from supplier
- For surtaxes- based on marking regulations

What can importers do?

- Review classification, origin and valuation of goods being imported
 - Paying or have paid surtax? check classification and timing; review remission orders which expanded during the year; consider making an application for remission
 - Review duty relief programs
 - Consider deferring duty if goods will be exported or rates are likely to go down
 - Exporting the goods? look at claiming drawback (refund) of duty paid on import
 - Review sourcing of imported goods to make use of trade agreements
 - Restructuring – transfer pricing/ customs valuation
-
- GST and BC PST- based on duty paid value- watch self-assessment requirements for BC PST

Medsleep

- (1) Did MedSleep and physicians work together to provide integrated medical sleep services to patients (i.e. exempt services); or
- (2) Did MedSleep provide separate administrative and other services to physicians (i.e. taxable services)

Facts

MedSleep hires staff and contracts with sleep physicians to provide sleep study services to patients across the country

Allocation of Fees

- Fees:
 1. Technical Fee - retained by MedSleep
 2. Professional Fee - allocated between MedSleep and the physician pursuant to a fee sharing arrangement

Analysis

1. What was provided:
 - a) use of MedSleep's premises, facilities, and equipment
 - b) Clerical and support services
 - c) Medical sleep services
2. Single compound or multiple supply:
single compound supply
3. How should the supply be treated:
exempt

Conclusion

Physician and clinic fee-sharing agreements work when drafted appropriately.

Purpose-built rental housing rebate

- A maximized version of federal rebate for landlords, from 36% to 100% of GST (and in Ontario, 100% of HST)
- But only applies essentially to a building with at least four full, private suites (but no condos), and at least 90% designated for long-term rentals, where construction began after September 13, 2023
- Effectively cancels the “self-supply” tax on new apartment buildings (historically a major cost)

The timing condition

- The CRA's position is that "construction" generally "begins" at the start of excavation work
- But no statutory definition or other bright line test
- No binding caselaw directly on point
 - *Clarke v. Canada (National Revenue)*, 1994 CanLII 7020: adopt the meaning used by the industry, which includes excavation

The showdown

- The CRA has been disallowing rebate applications because of the timing condition
- Developers with projects that are ineligible under the CRA's test have understandably adopted more favourable interpretations supporting a later point on the continuum of the project

UHT and hotel units

- The CRA has been assessing the 1% UHT on owners of hotel units that include a kitchen or kitchenette
- Detected by filings reporting non-resident income

The scandal

- The tax was intended to apply to “vacant or underused housing” owned by foreigners
- As a policy matter, hotel units aren’t thought of as “housing”, even if structured essentially as condo buildings – just with considerable amenities, staff and a franchise arrangement

The tax base

- The CRA takes an arguably aggressive interpretation of the UHT legislation
- The first element is the definition of a “residential property”
- It includes a “residential condominium unit or other similar premises” (i.e. a unit with a private bath, living area and kitchen facilities)
- On a literal read, this might capture certain common types of hotel units, which are often owned by non-Canadian investor/tourists – even though they are arguably “commercial” condominium units and are classed accordingly for property tax purposes

The unsuitability exemption

- The second element of the CRA's position is that the exemption for residential units "not suitable for year-round use as a place of residence" doesn't apply (i.e. must be physically unsuitable)
- Hotel units generally have *legal* prohibitions (e.g. caveats on title, contracts among owners or with franchisors, zoning restrictions) and *practical* impediments preventing "suitability" for long-term residential use by the owner
- Due to the low tax and high cost of litigation, this might not get before the TCC



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Audit and Litigation Update

Vivian Esper
Morgan Watchorn

Audit and Litigation Update

Vivian Esper and Morgan Watchorn

- Expansion of the CRA audit powers
- New Voluntary Disclosure Program guidelines
- Key case law updates

Tax Litigation Shock Podcast



Expansion of the CRA audit powers



Answers under oath or affirmation or by affidavit



Notice of Non-Compliance



Compliance order penalties



Normal reassessment period extensions

Where are we at today?

Introduced in
Budget 2024

April of 2024:
release of draft
legislation

August of 2024:
release of
explanatory notes

August of 2025:
release of the
second round of
draft legislation

Provisions will be
in force on Royal
Assent

Answers under oath or affirmation, or by affidavit

Changes to 231(1)(d) of the ITA: CRA's power to compel the taxpayer or any other person to answer questions orally at a place designated by the CRA, by video-conference or another form of electronic communication

Feb. 2022

Apr. 2024

Proposed new section 231.41 gives the CRA the power to compel oral answers under oath or affirmation or answers in writing by affidavit.

Answers under oath or affirmation, or by affidavit – risks

Criminal sanctions:
perjury and section
239 of the ITA

Answers accepted
as evidence in
judicial proceedings

Answers under oath or affirmation, or by affidavit – rules and safeguards

- Comparable to the inquiry process in section 231.4 of the ITA or examinations for discovery in the Tax Court of Canada
- No rules or safeguards:
 - Right to counsel?
 - Protection against self-incrimination?
 - Can questions be objected to? (risk of notice of non-compliance)
 - Will transcripts be provided?

Notice of non-compliance (“NONC”)



New section 231.9: a NONC can be issued for failure to comply in whole or in part with audit requests under 231.1, 231.2 or 231.6

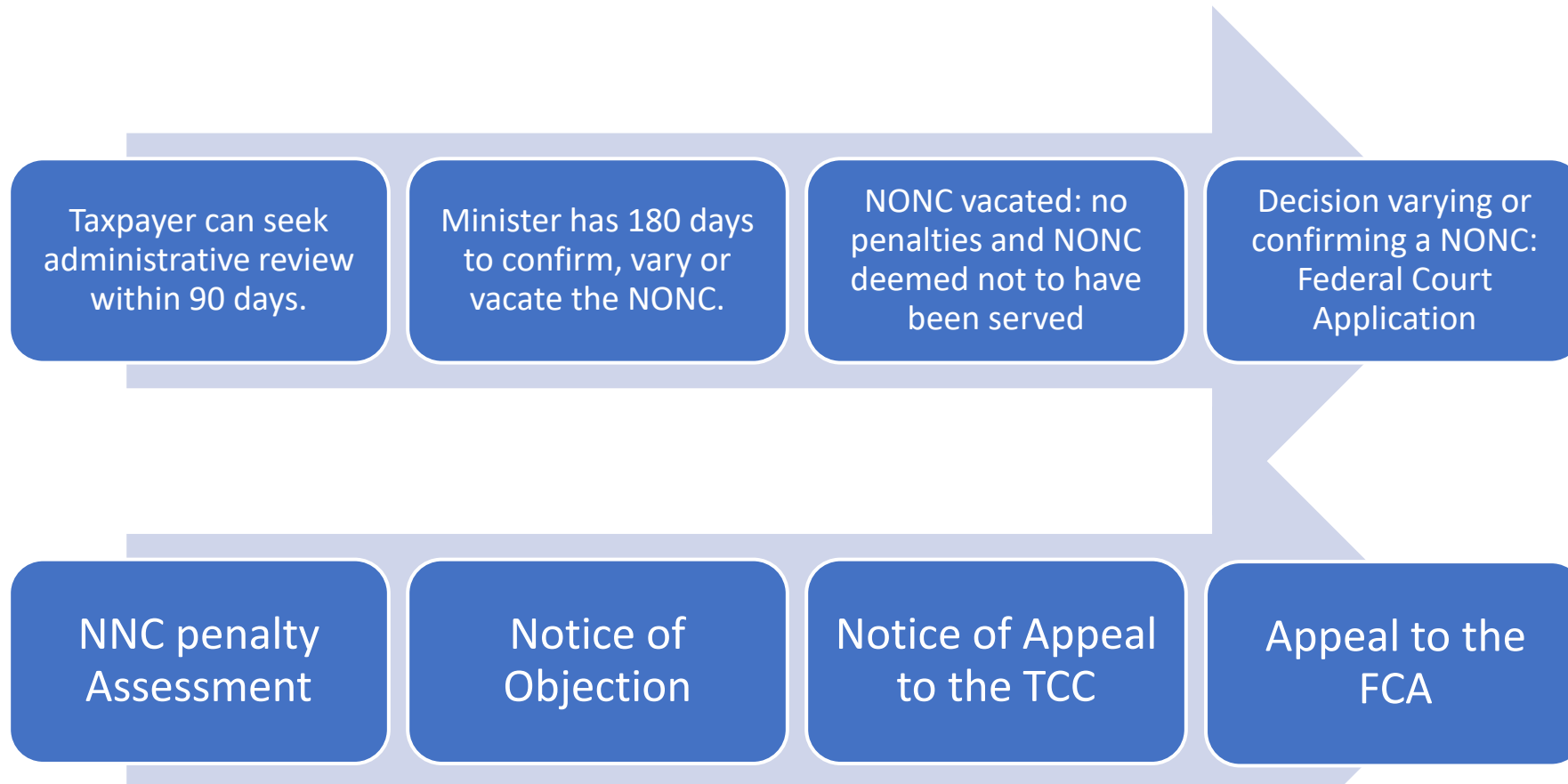


Penalty of \$50 per day, to a maximum of \$25,000 per NONC while it is outstanding

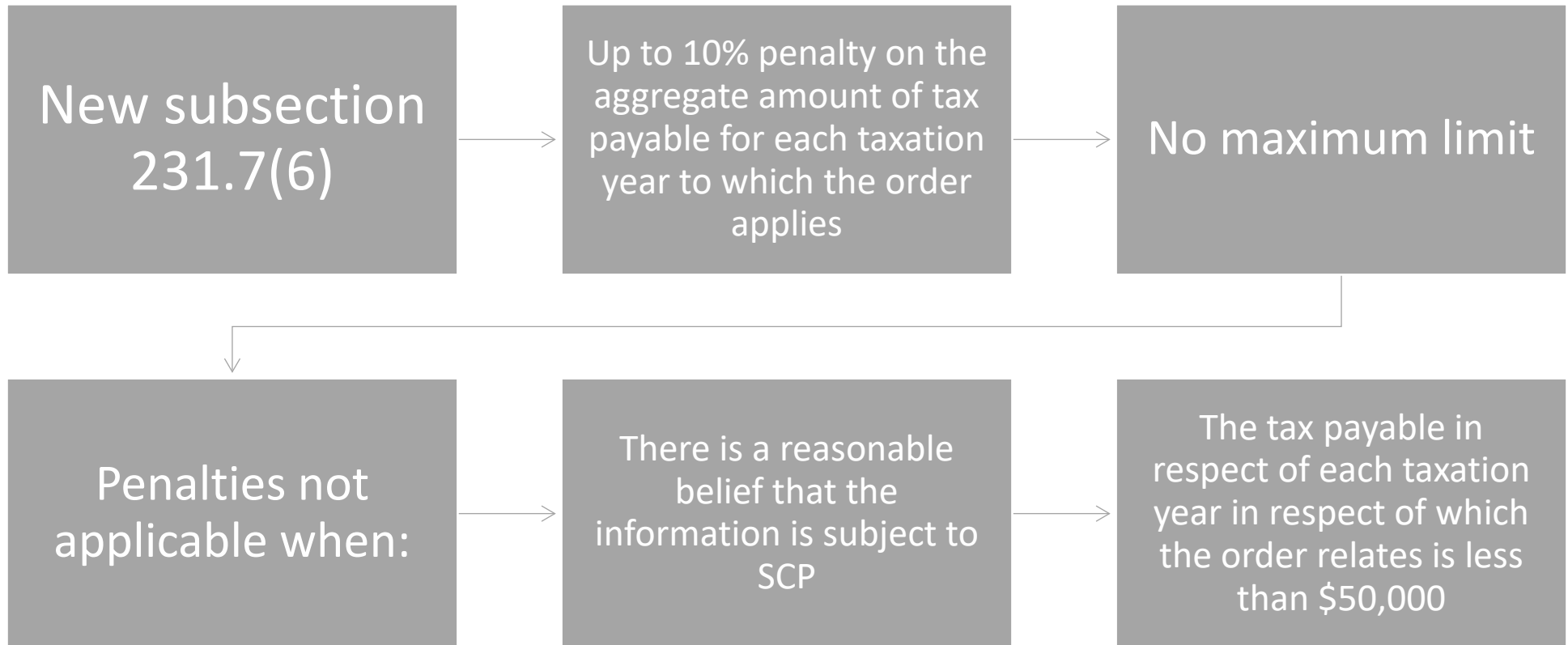


Warning before issuing a NONC?

Notice of non-compliance (“NONC”) - Procedure



Compliance Order Penalty



Compliance Order Penalty - procedure



Taxpayer's right to object

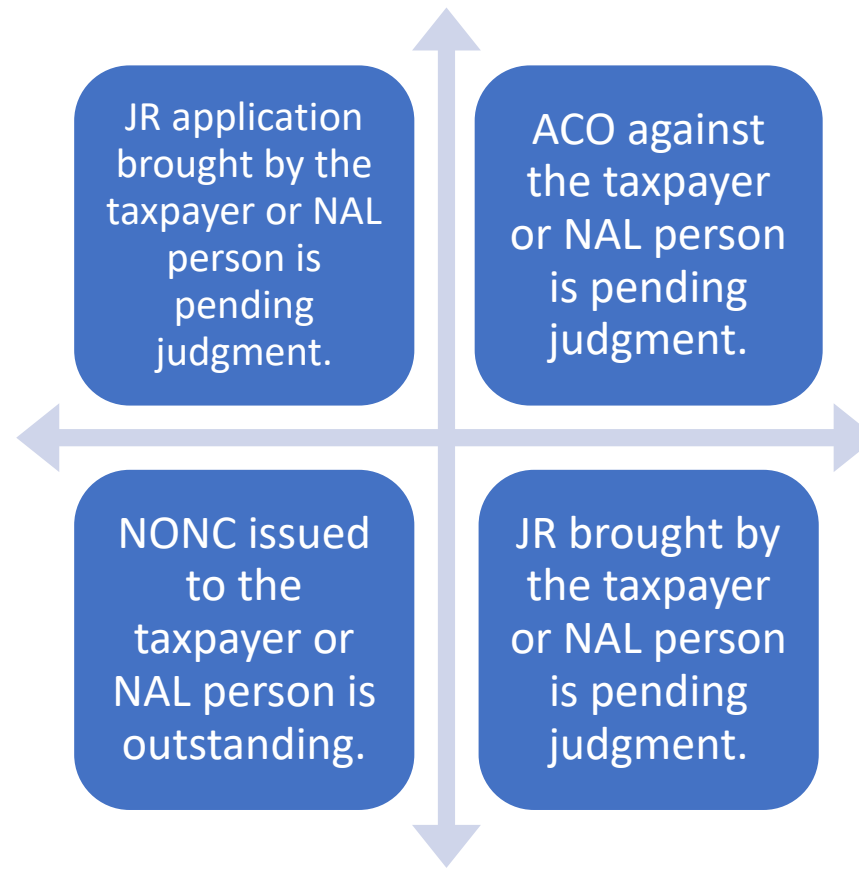
Minister is required to vacate or vary an assessment upon determining that the penalty is, in the circumstances, disproportionate or unfair.

Minister may also provide any other relief as it deems appropriate.



Decision that denies the objection may be appealed to the TCC

Suspension of the Normal Reassessment Period



Suspension of the NRP - issues



Incentive to issue NONCs or make ACO to extend the normal reassessment period

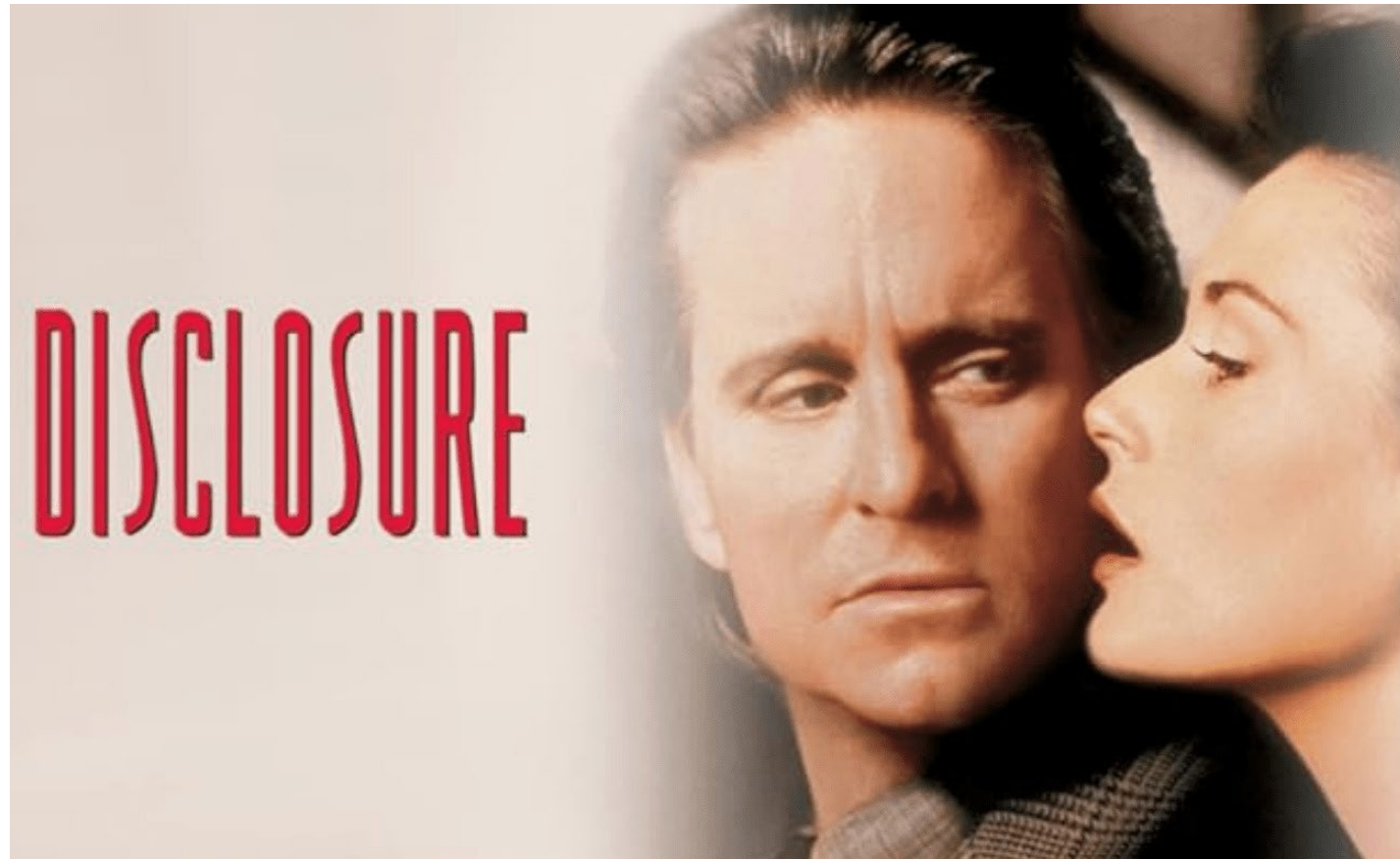


Extension when NONC issued to NAL in respect of the taxpayer's taxation year (regardless of subject-matter)



Lack of control of the NAL person's compliance with audit requests

Voluntary Disclosures



New VDP Program

IC00-1R7: Applications made on or after October 1, 2025



Voluntary: no audit or investigation initiated against the taxpayer or a related taxpayer in respect of the information being disclosed



Two streams: Unprompted and Prompted

Voluntary Disclosures - Benefits

Unprompted: 75% interest relief
and 100% penalty relief



Prompted: 25% interest relief and
up to 100% penalty relief



No criminal prosecution and no
GNP under both streams

New VDP Program – requirements

- Returns, forms, statements and schedules:
 - Domestic Income: 6 most recent years
 - Assets or income outside of Canada: 10 most recent years
- RC199 Form
- Payment or request for payment arrangement
- Must include information regarding a year that is at least one year past due for filing
- Errors or omissions must carry a potential application of penalties or interest, or both
- Information regarding non-compliance: consider submitting a letter with a narrative regarding the non-compliance

Key case law

*The King v DAC
Investment
Holdings Inc., 2024
TCC 63; A-197-24*

*The King v Vefghi
Holding
Corporation, 2025
FCA 143*

The King v DAC Investment Holdings Inc.



Tax Court decision – GAAR does not apply to “non-CCPC” transactions



Crown appealed to FCA (A-197-24)



Appeal heard October 7, 2025 – decision reserved

The King v Vefghi Holding Corporation



Concerns the timing for when two corporations interposed by a trust are “connected” for purposes of Part IV tax



Tax Court – test connectedness at different points depending on the year-end of the recipient corporation



FCA – test connectedness at the end of the trust’s taxation year



Leave to Supreme Court of Canada filed October 10, 2025 (case number 42041)



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Planning Update

David Baxter
Alexander Demner
Asif Abdulla

Presentation Overview

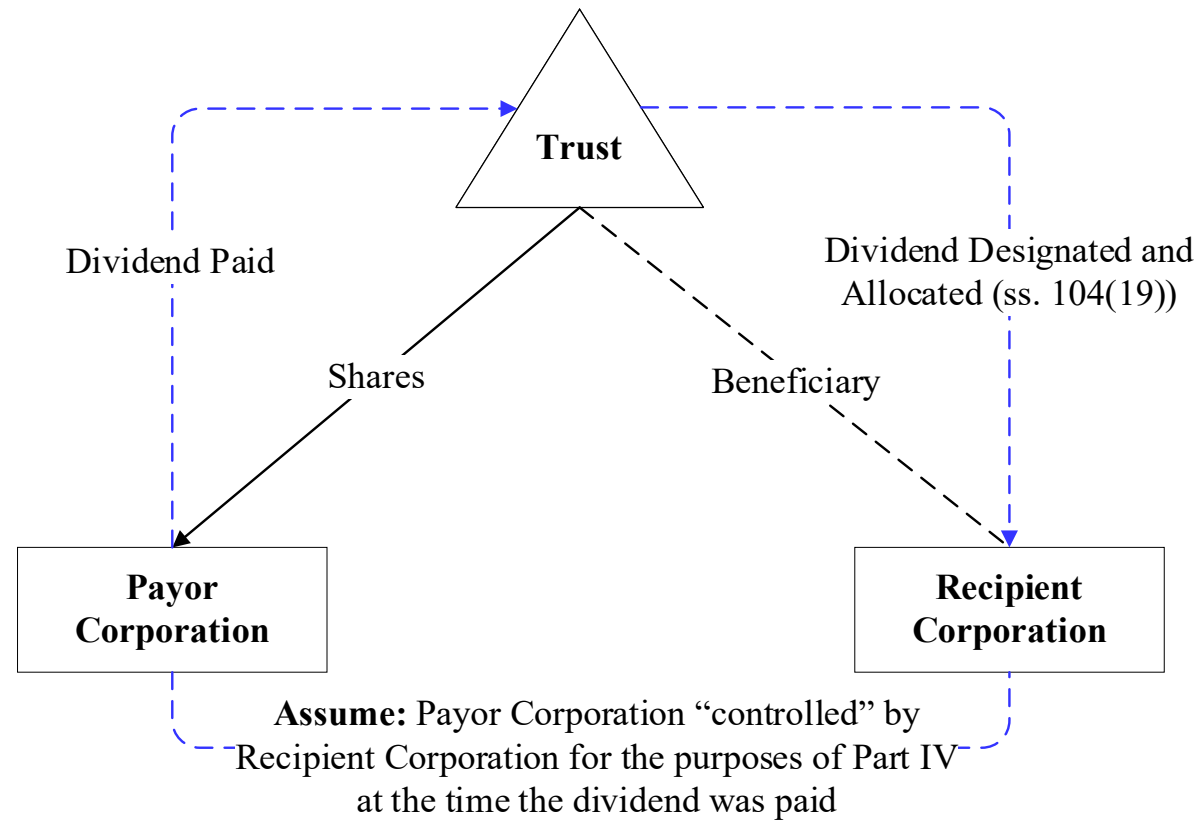
- Tax planning post-*Vefghi*
- Foreign affiliate / relevant tax factor changes
- Eligible small business corporation share proposals
- Trust reporting update (again!)
- Real estate flipping taxes
- Alternative minimum tax (AMT)
- Crystallization planning
- Disclosure rules



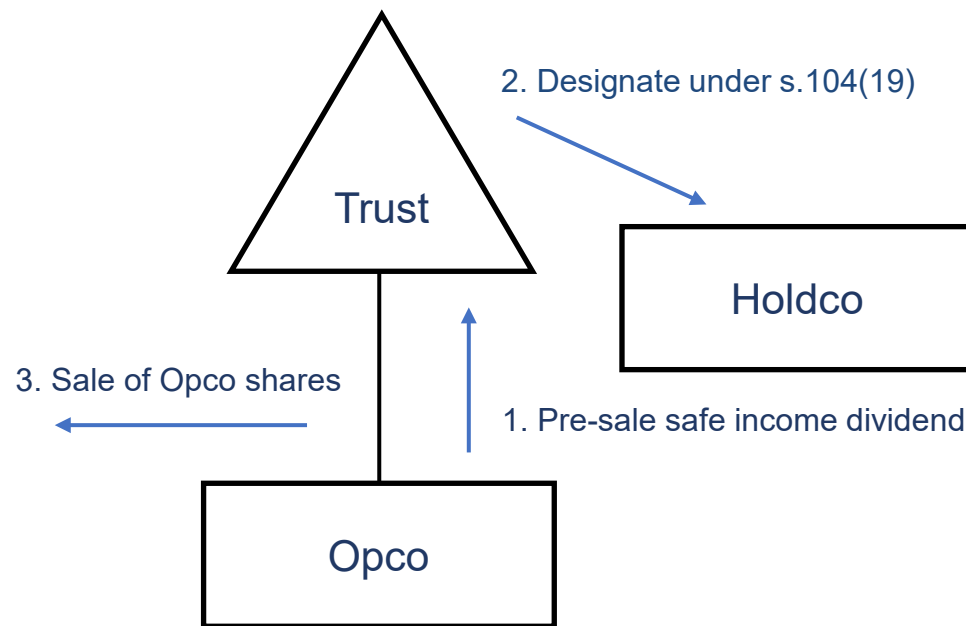
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Tax Planning Post-Vefghi and S.O.N.S.

Dividend Planning – Trust/Holdco



Pre-Sale Dividend Planning



- ITA 104(19) deems receipt by Holdco in tax year in which trust's year ends
- Opco sold after dividend received by trust
- Timing of "connected" test for Part IV tax purposes?
 - Various options
- CRA's position: Dec 31

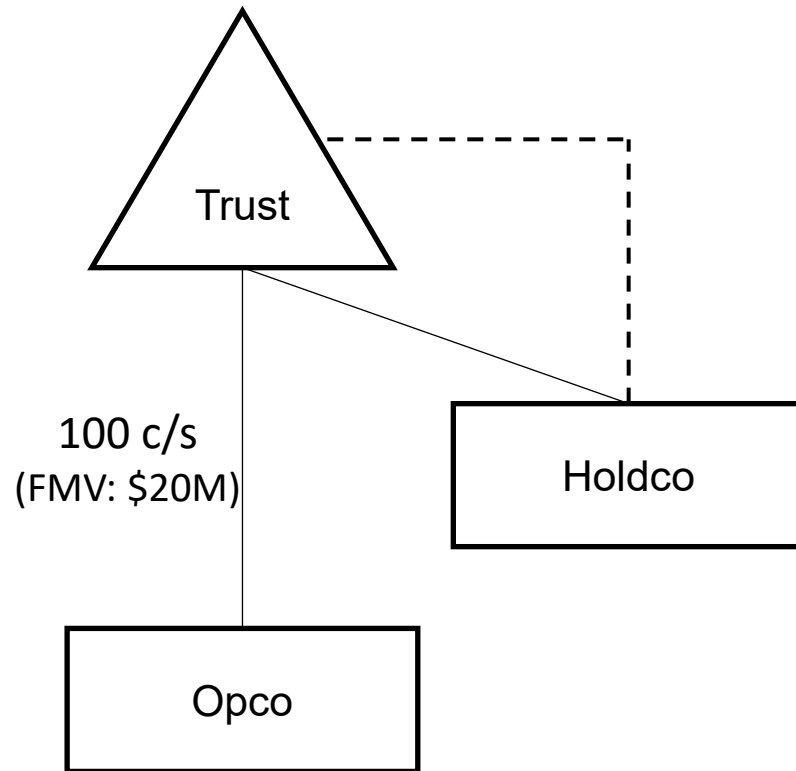
Part IV – *Vefghi* & S.O.N.S.

- **Issue:** When to test “connected” status for Part IV tax for dividends designated by a trust to Holdco beneficiary?
- **TCC:** The date that the dividend was received by the trust (produces different results depending on Holdco year-end)
- **FCA:** The last day of the trust’s taxation year in which the dividend is received
 - **Takeaway:** Dividend payor and corporate beneficiary must be “connected” at the end of the recipient-trust’s taxation year
- **SCC:** Application for leave to appeal to SCC

Tax Planning Issues Post-Vefghi

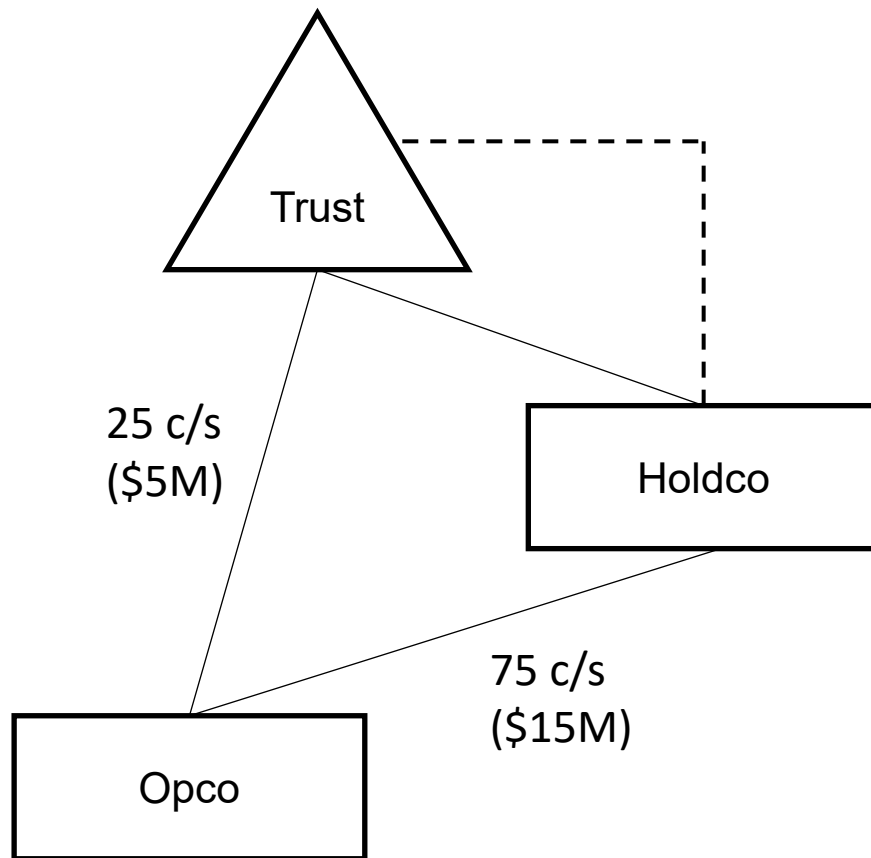
- M&A Transactions: pre-sale safe income dividends
 - Opco typically sold before trust's ordinary tax year, so cannot be connected with Holdco at year-end
 - Consider additional pre-sale safe income planning
- Corporate reorganizations:
 - Corporate dissolutions and certain mergers could cause a company to no longer exist at pertinent connected test date
 - Consider deferral of events that could sever connected status (ex. share restructurings, divorce)

Pre-Sale Planning



- All entities have Dec 31 year ends
- Opco shares to be sold for \$20M before trust's ordinary year-end
- Opco to purify and distribute safe income of \$1M pre-sale
- LCGE of 4x individual beneficiaries to be utilized (\$5M total)
- Problem: pre-sale \$1M dividend to Holdco would result in Part IV tax

Pre-Sale Planning (cont.)



- Roll out 75 c/s of Opco to Holdco
 - Trust retains ~\$5M worth of c/s (LCGE x 4)
- Repurchase 5 c/s of Opco shares held by Holdco resulting in deemed dividend of ~\$1M
 - No Part IV tax because Opco and Holdco connected by common control (avoids trust timing issue)
 - Imperfect safe income issue; only 75% of safe income (\$750K) accessible (remaining \$250K recharacterized under s.55(2))
- Trust and Holdco sell 95 c/s of Opco



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Foreign Affiliate Regime and Relevant Tax Factor Changes

Substantive CCPCs and Foreign Affiliate Regime Changes

- Budget 2022 outlined two proposals to counter deferral strategies allegedly utilized by corporations controlled by Canadian residents
 - “Substantive CCPC” rules
 - Changes to foreign affiliate regime
- Domestic substantive CCPC rules have captured much attention
 - Curtailed non-CCPC planning in respect of taxation years ending on or after April 7, 2022
 - For earlier years, awaiting FCA decision in appeal of *DAC Investment Holdings*
 - Appeal heard on October 7, 2025

Changes to Foreign Affiliate Regime

- Intended to proactively prevent circumvention of CCPC regime through a foreign affiliate (FA)
- *Relevant tax factor* changed from 4 to 1.9 for CCPCs and substantive CCPCs
 - RTF is now the same as an individual
 - Affects amounts included in income on account of FAPI (as earned by an FA) and dividends paid from taxable surplus of an FA (when repatriated)
- Big change for all private enterprises with FAs
 - Even if FA resides in a “high tax” jurisdiction (ex., USA)

Relevant Tax Factor (RTF)

- Variable used to ensure total tax paid on earnings of an FA (either upfront or when earnings repatriated) approximates total tax which would be paid if earned directly by Canadian shareholder
- If the RTF = 4, then (generally) 25% foreign tax sufficient to shield earnings from taxation in hands of Canadian corporate shareholder
 - Note: FAPI includes far more than aggregate investment income (AII)
 - Ex., real estate development profits, service fees, etc.
- Under news rules, foreign tax on non-excluded income must equal ~52.63%
 - If less, Canadian tax payable on FAPI by CCPCs and substantive CCPCs

Foreign Affiliate Regime Changes

- Consequential changes to CDA regime in order to achieve integration on after-tax earnings subject to notional tax rate of 52.63%
- Dividends from taxable surplus and hybrid surplus are added to CDA (no longer added to GRIP)
- Generally applies to taxation years of CCPCs and substantive CCPCs beginning on or after April 7, 2022

Foreign Accrual Business Income (FABI)

- To “better align” the foreign and domestic anti-deferral regimes, FABI concept was introduced in August 2024
 - FABI is effectively a subset of FAPI, but permits use of higher RTF
- FABI preserves historical RTF (being 4) for a CCPC or substantive CCPC for purposes of:
 - computing its deduction under ITA 91(4) in respect of FABI attributed to it from a CFA; and
 - computing its deduction under ITA 113(1)(b) & (c) in respect of dividends received from its FA from taxable surplus
- Requires calculation of new surplus account (i.e., FABI surplus)

FABI – August 2024 Proposals

- Originally, FABI only covered certain narrow types of income
- Amounts that would otherwise be FAPI in respect of:
 - Income from a real estate investment business (i.e., development of real property for sale or leasing of real property) if >5 FTE employed by the FA or another member of the corporate group
 - Provision of services subject to recharacterization under ITA 95(2)(b) if amounts payable for such services are deductible:
 - by a Canadian taxpayer in the corporate group in computing its income from an active business income in Canada; or
 - in computing the FABI of another FA in the corporate group

“New” FABI - August 2025 Proposals

- FABI now defined to (generally) cover income that would not be “aggregate investment income” (All) in domestic context
- Amounts that would otherwise be FAPI in respect of income of a FA that:
 - would not be All (as defined in ITA 129(4)) *if*, hypothetically, (1) the FA were a CCPC; and (2) such income was derived from a source in Canada; and
 - is not derived from direct or indirect payments to the FA that reduce income of a non-arm’s length CCPC or substantive CCPC (and certain other taxpayers) that would otherwise have been taxed at a high rate or would reduce (non-FABI) FAPI of another FA.

August 2025 (cont.): FABI Limitations

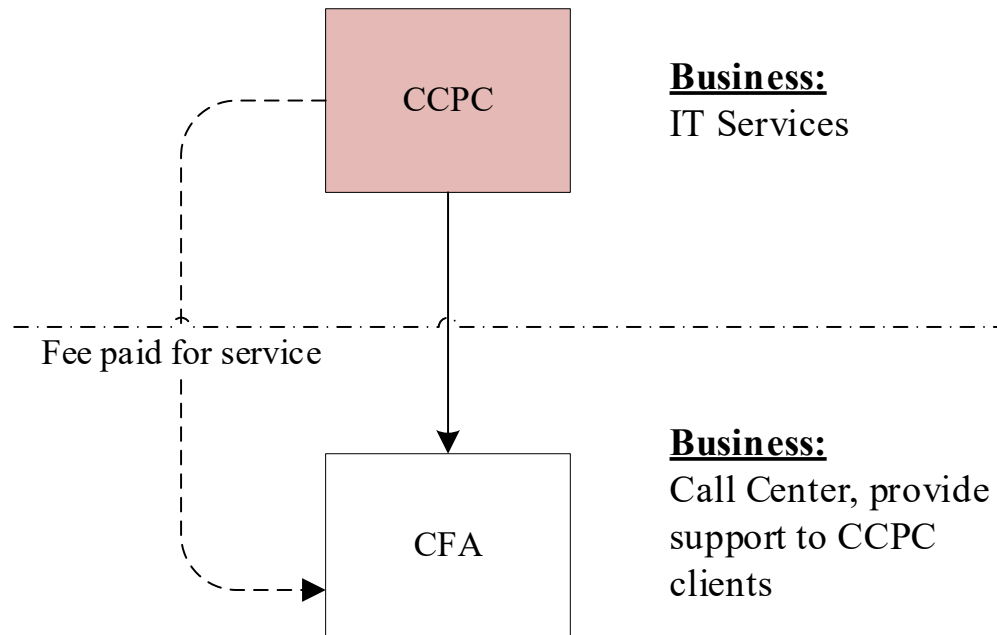
- A payment **received** by the affiliate will not be treated as FABI (and thus remains as FAPI with lower RTF) if made by a payor that is:
 - a CCPC or substantive CCPC in respect of which the affiliate is a FA (or certain other NAL persons);
 - another FA of a taxpayer of whom the affiliate is a FA, etc.; or
 - a partnership any member of which is a person or partnership listed above.
- AND the payment is **deductible** in computing the income of the payer that would otherwise be taxable at a rate that approximates the highest personal income bracket (i.e., All or FAPI which is not FABI).

FABI – Elections

- Elective relief required to preserve the higher RTF on FABI and FABI surplus distributions
 - ITA 93.4(2) election: RTF of 4 in computing ITA 91(4) deduction (multiple of FAT) in respect of FABI of a CFA
 - ITA 93.4(3) election: RTF of 4 in computing ITA 113(1)(b) & (c) deduction in respect of dividends paid by FA out of its FABI taxable surplus
- Election must be made in prescribed form by the filing due-date for the taxation year when FABI earned or dividends received, as applicable
- Applies to taxation years that begin after 2025
 - Treatment can be extended to pre-2026 taxation years if election made before the filing due-date for the taxpayer's first taxation year that begins after 2024

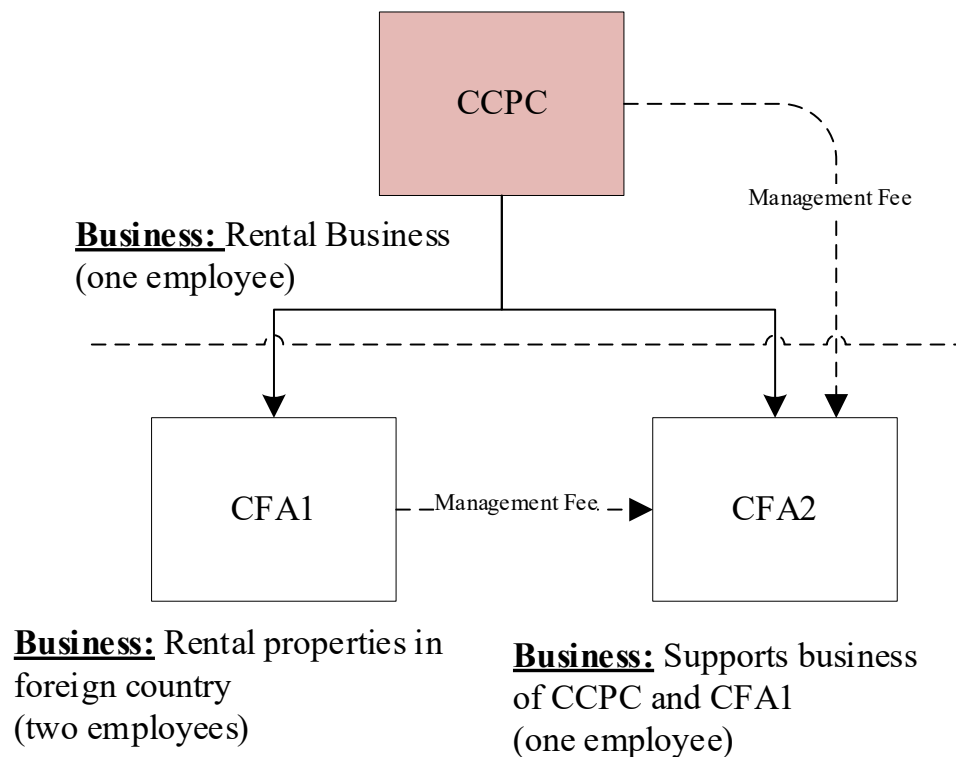
Example 1

Consequences



- Income earned by CFA is FAPI under ITA 95(2)(b)(i)(A)
- Fee income would not be All if CFA were a CCPC and the income were from a source in Canada
- Payment does not reduce income of CCPC that was subject to a high rate of corporate tax (50.67%).
- Result: FAPI elections may be filed

Example 2



Consequences

- CCPC's business is a "specified investment business" which gives rise to All
- CFA1 has an investment business and would be earning FAPI. Given that it would be All if it were a CCPC, its FAPI does not qualify as FABI.
- While the management fees received by CFA2 would not be included in All if it was a CCPC, its income is from amounts paid to it by:
 - a CCPC that reduces its All; and
 - a foreign affiliate that reduces its FAPI (other than FABI).
- Result: No FABI for either CFA1 or CFA2 (so full FAPI)



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Eligible Small Business Corporation Shares Proposals

Eligible Small Business Corporation ("ESBC") Share Rollover

- ITA 44.1 – defers taxation of capital gains realized on *qualifying dispositions* of ESBC shares if replacement ESBC shares acquired
- Multiple conditions currently, including:
 - individual vendor (not trust)
 - common share issued from treasury
 - total carrying value of assets of issuing corporation (and related corporations) does not exceed \$50 million immediately before and after time of issuance
 - replacement ESBC acquired in year or 120 days thereafter
- Three proposed changes for qualifying dispositions occurring on or after January 1, 2025

ITA 44.1: Existing vs. Proposed Rules

Condition	Existing Rule	Proposed Rule
Period in which the “replacement share” must be acquired	Acquired in the year of disposition or first 120 days of next year	Acquired in the year of disposition or following year (i.e., eight months longer than before)
Characteristics of the ESBC share issued by the corporation to the individual	Only “generic” common shares qualify	No restriction (i.e., both common and preferred shares can qualify)
Limitation on “carrying value” of assets of the issuing corporation (and related corporations)	Cannot exceed \$50M	Cannot exceed \$100M (i.e., increased by \$50M)

New ITA 44.1: Observations

- Existing ITA 44.1 rollover rule has not been widely utilized
- Proposals undoubtedly intended to facilitate greater usage
 - Encourage reinvestment in other CCPCs carrying on business in Canada
- Reasonable expectation?



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Trust Reporting Update

Enhanced T3 Reporting - Update

- ITA 150(1.2) mandates most “express trusts” to file T3 return (regardless of income earned)
 - Detailed personal info required to be disclosed (Reg. 204.2)
- Gross negligence penalty up to 5% of FMV of trust property
- August 2024: proposed expansion to reporting exemption list
 - Total FMV of trust assets (of any type) \$50K or less throughout year
 - Individual-only trusts with total FMV of trust assets \$250K or less (restricted by asset type)
 - Segregated lawyers’ trust accounts with \$250K or less (cash only)
 - Narrower definition of “settlor”
- Effective for taxation years ending after December 30, 2024

August 2025 Proposals

- Several exemptions proposed to be slightly expanded; ex:
 - Segregated lawyers' trust accounts can hold more than cash
 - GREs included even if no return filed
- No disclosure of information subject to solicitor-client privilege
- Effective for taxation years ending after December 30, 2025

Bare Trust Reporting

- 2023: bare trust filings not required
 - Per March 28, 2024 CRA announcement
- 2024: bare trust filings not required
 - Per August 12, 2024 NWMM
- 2025: bare trust filings required (taxation years ending after December 30, 2025)
 - New bare trust definition in ITA 150(1.3)
 - New exceptions in ITA 150(1.31)

Bare Trusts – Certain Exceptions

- All beneficial owners are also legal owners, and no additional legal owners exist
- Bare trust arrangements involving related persons and principal residences
 - Note expanded definition of “related”
- Property beneficially owned by partnerships where legal title is held by one or more partners
 - No longer limited to general partners holding title



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Real Estate Flipping Taxes

B.C. Anti-Flipping Tax

- Provincial tax imposed on net income arising from sale of residential property within two years of purchase
- Wholly separate taxing statute - *Residential Property (Short-Term Holding) Profit Tax Act*
- Various exemptions and continuity rules for transfers between related persons
- 20% tax rate for sales within one year of purchase; straight-line decline to 0% for sales within 1-2 years
 - For individuals in highest tax bracket, combined tax rate (Fed + BC) on business income of 73.5%
- Applicable to dispositions on or after January 1, 2025

Federal “Flipped Property” Rules

- ITA 12(12) – (14): federal “flipped property” rules
- Applies to residential property held for <1 year
- Exceptions:
 - Death of the taxpayer or related person
 - Marital breakdown
 - Threat to personal safety
 - Serious illness or disability
 - Involuntary terminations of employment or insolvency
 - Destruction / expropriation of property
 - If taxpayer is a trust, deemed disposition under ITA 104(4) [proposed]

Federal “Flipped Property” Rules

- If taxpayer realizes a gain from a *flipped property*:
 - Taxpayer deemed to carry on business that is an adventure or concern in the nature of trade regarding the property
 - Property deemed to be inventory and not capital property
- Thus, no capital gain or principal residence exemption
- Losses not recharacterized as business losses or added to *non-capital loss* balance
- Effective for dispositions after 2022

Anti-Flipping/Flipped Property Comparison

	B.C. ANTI-FLIPPING TAX	FEDERAL FLIPPED PROPERTY RULES
Effective Date	January 1, 2025	January 1, 2022
Captured Properties (incl. rights)	Housing units (in B.C.) and residential-zoned land	Housing units (throughout Canada)
Holding Period	<730 days	<365 days
Continuity Rules	Yes (ex. acquisitions from “related person”)	No
Tax Rate	1-365 days: 20% 366-730 days: 19.99%-0%	Business income treatment
Exemptions	Entity-specific (ex. charities) Property-specific (ex. builders, foreclosures, related-party sales)	Life events (ex. marriage, death, insolvency) – past or anticipated

Navigating Flipping Rules

- Navigating flipping rules / taxes can be quite challenging
- Differing (/missing) provisions can result in surprising application of rules
 - Ex.: lack of continuity rules in federal flipped property rules vs. narrower exceptions under B.C. anti-flipping tax
- Careful planning required to avoid actual or potential application of rules to dispositions (incl. future sales)
- Exacerbated by continued existence of “foreign buyer ban” until 2027 (...plus?)

Example: Trust Formed to hold Residential Property

- Parent wishes to settle a trust to acquire residential property for the benefit of children
- Since trust is not a JST/AET, cannot claim the PRE on a future sale
- If the property is a principal residence of a beneficiary child, the trust would typically roll the property to the child (with child claiming the PRE on sale).
- Flipping tax considerations: no express rule to deem the child to have owned the property while it was held by the trust
- To avoid uncertainty, distribution should occur > 2 years prior to sale (>1 year for federal flipping tax purposes)



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Alternative Minimum Tax (AMT)

AMT – Background

- ITA 127.5 – 127.55: parallel tax calculation designed to restrict utility of certain tax “preferences”
 - Ex. partial inclusion rate for capital gains
- Liability based on greater of “ordinary” tax calculation and AMT calculation
- AMT recoverable against ordinary tax liability over ensuing seven years
- Historically, applied in relatively narrow scenarios
 - Ex. lifetime capital gains exemption (LCGE) claims, flow-through share deductions, or tax shelter investments

AMT – 2024 Changes

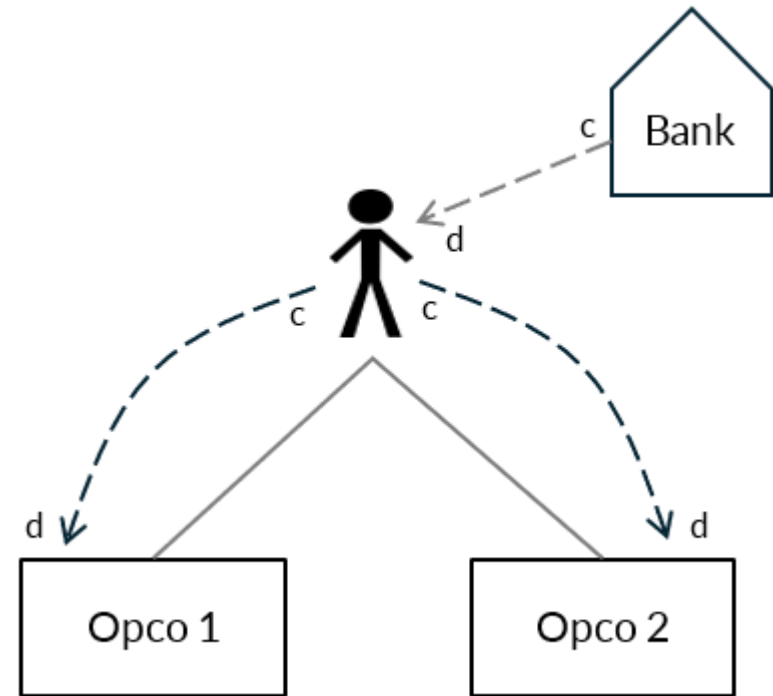
- Principal changes:
 - Broaden AMT base by:
 - Increasing / introducing inclusions in the form of add-back of certain tax “preferences”
 - Disallowing deductions for various expenses and carryover balances
 - Increase AMT rate from 15% to 20.5% (second tax bracket rate)
 - Raise AMT exemption from \$40,000 to lower bound for second-highest tax bracket (currently, \$173,205)
- Things that did not change:
 - Seven-year carry-forward period (problematic given higher AMT)
 - Net 30% inclusion rate for capital gains sheltered with LCGE
 - Only individuals and trusts (subject to certain exclusions) subject to AMT

AMT – High-Impact Scenarios

- Prescribed rate loan structures
 - Extra cash needed to fund AMT? (Q1 2026 issue)
- Loss carryovers
- Large charitable donations
- LCGE claims (beneficial)
- Back-to-back loan arrangements

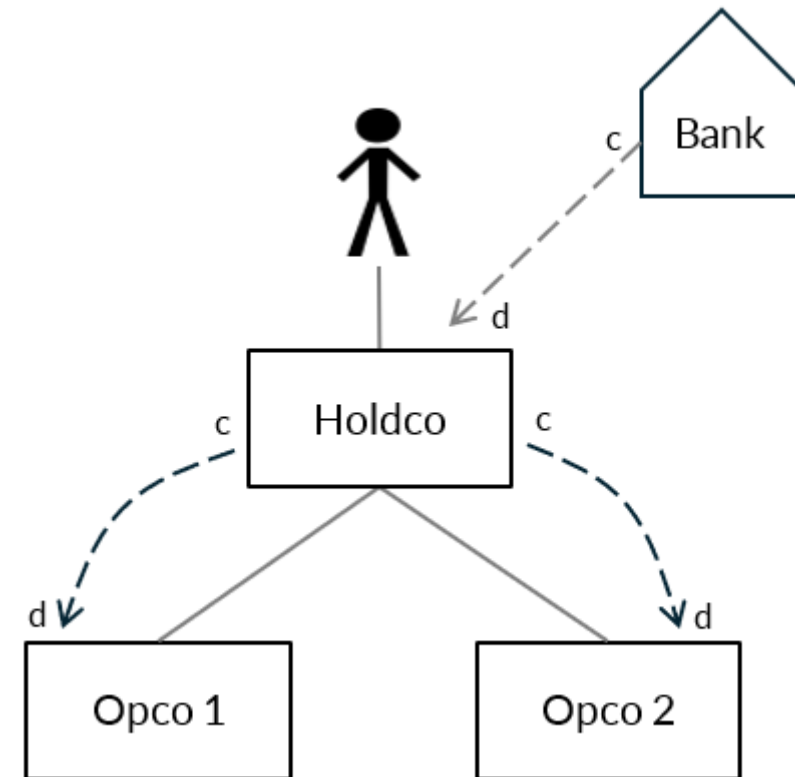
AMT – Back-to-Back Loan Arrangements

- Individual borrows \$ from bank and lends proceeds to each Opco
- Interest received by individual from each Opco
- Corresponding interest expense for individual so nil (or nominal) net income
- BUT only $\frac{1}{2}$ of the interest expense incurred to earn income from property is deductible for AMT purposes

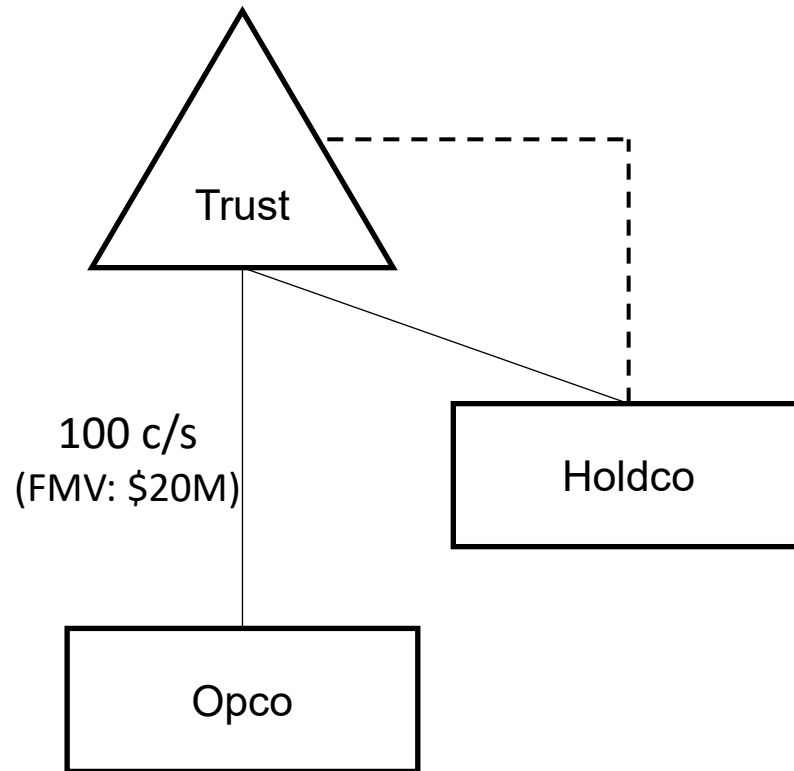


AMT – Back-to-Back Loan Arrangements

- Solution: individual assigns the loans receivable from each Opco to an intermediary Holdco
- In consideration therefor, Holdco assumes the loan owing to the bank
 - Individual may need to provide guarantee to bank
- Alternatively, bank lends directly to each Opco (assuming no commercial impediments)



AMT – Trust / Holdco Sale Planning



- Opco shares to be sold for \$20M
- LCGE of 4x individual beneficiaries to be utilized (\$5M total)
- AMT issue if remaining \$15M capital gain retained by trust or allocated to individual beneficiaries
- Solution: allocate (and designate) \$15M capital gain to Holdco
 - Slight disintegration for corporate capital gain
 - Can recover NERDTHO over time

AMT – Mitigation Strategies

- Transfer investment assets to corporation?
- Allocate trust income to corporate beneficiary?
- Pre-donation planning



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Crystallization Planning

Reflections on Crystallizations

- Extensive crystallization planning undertaken in 2024
 - Largely unnecessary given abandonment of capital gains rate changes
 - Lingering effects
- Multiple lessons can be learned
 - Ex.: value of flexibility

Crystallization Planning

- Consider reversible crystallizations
 - Address (unexpected) changes
- Lingering “back door” rate increase
 - AMT for individuals realizing significant capital gains
 - Effective tax rate increases to ~32.1%



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Disclosure Rules

Overview of Disclosure Rules

- Applies to:
 - *reportable transactions* (ITA 237.3)
 - *notifiable transactions* (ITA 237.4), and
 - *uncertain tax treatments* (ITA 237.5)
- Also new GAAR reporting
- Disclosure rules have been enacted
 - Subject to injunctive relief for legal professionals

Reportable Transactions

- Historically only applied to compel proactive disclosure of tax shelter-like transactions
- Now applies if an *avoidance transaction* has only one of three “hallmarks”
 - advisor/promoter earns a contingency fee
 - Based on amount of tax benefit, achieving tax benefit or number of participants
 - advisor/promoter has confidentiality protection
 - Prohibits disclosure of details of a transaction which results in a tax benefit
 - taxpayer, advisor/promoter or other non-arm’s length person has contractual protection
 - Any form of insurance or other protection (ex., indemnity or guarantee) which protects a person from failure of a transaction to achieve a tax benefit
 - Excludes standard professional liability insurance & certain M&A protections b/w arm’s length parties
- All relevant parties and advisors required to report (i.e., discontinuation of single-filer principle)
 - Seek consensus amongst parties and advisors on M&A transactions?
- Normal reassessment period extended if required information return not filed

Notifiable Transactions

- Introduced in the 2021 federal budget
- Require disclosure of:
 - transactions or series of transactions designated by Minister
 - transactions or series of transactions substantially similar to those designated by Minister
 - same or similar *tax consequences* to a designated transaction and:
 - that is factually similar, or
 - based on the same or similar “tax strategy” (undefined)
 - to be “interpreted broadly in favour of disclosure”
- Five notifiable transactions have been designated to date (effective November 1, 2023)

Notifiable Transactions (cont): Designated Transactions

- NT-2023-01: Straddle loss transactions using partnerships
- NT-2023-02: Avoidance of deemed disposition of trust property
- NT-2023-03: Manipulation of bankrupt status to reduce/avoid debt forgiveness
- NT-2023-04: Reliance on purpose tests in ITA 256.1 to avoid acquisition of control
- NT-2023-05: Back-to-back arrangements to avoid thin cap rules or Part XIII tax
- Manipulation of CCPC status was previously given as “sample” but dropped (presumably due to enactment of *substantive* CCPC rules)

Notifiable and Reportable Transactions – Prescribed Form

- Form RC312: Reportable Transaction and Notifiable Transaction Information Return
- Information return requires disclosure of:
 - Description of the transaction in detail
 - Expected tax treatment and all potential benefits
 - Identification of all applicable legislative or treaty provisions
 - Identification of all persons required to disclose
 - Description of contractual protection and contingent fee arrangements (i.e., hallmarks), if any
- No required disclosure of information that is subject to solicitor-client privilege

GAAR Changes

Five main amendments to the GAAR

1. ITA 245(0.1): new preamble outlining balance between (i) protecting the tax base, etc. and (ii) taxpayers' need for certainty when tax planning
2. Lowered the "avoidance transaction" threshold (i.e., primary *bona fide* non-tax purpose now insufficient)
3. ITA 245(4.1): if transaction lacking economic substance, then tends to indicate misuse or abuse
4. ITA 245(5.1): introduction of GAAR penalty
 - a. Taxpayer penalty = 25% of tax savings less any assessed gross negligence penalty
 - b. Not applicable if reasonable to conclude that the transaction was not subject to the GAAR based on "identical or almost identical" published CRA administrative guidance or a court decision
 - c. Also not applicable if proactive disclosure is made to the CRA
5. ITA 152(4)(b)(viii): extension of normal reassessment period by 3 years if transaction not disclosed (or 1 year if disclosed within a year of deadline)

Summary of Disclosure Rules

	Reportable Transactions	Notifiable Transactions	GAAR
Statutory Reference	ITA 237.3	ITA 237.4	ITA 245 ITA 237.3(12.1) & (12.2)
Prerequisites	Avoidance transaction in respect of which there is: • a contingency fee; • confidential protection; <u>or</u> • contractual protection	Transaction or series that is, or is substantially similar to, a transaction or series that has been designated by the Minister (five to date)	Avoidance transaction or series that results in an abuse or misuse of the ITA, regulations, ITAR or tax treaty (having regard to, inter alia, lack of economic substance)
Who must file?	• Persons with the resulting tax benefit • Persons who enter into avoidance transaction for benefit of person receiving tax benefit • Advisors / promoters in respect of the avoidance transaction (and any other NAL person) entitled to a contingent fee or contractual protection • <i><u>Note:</u> temporary injunctive relief for legal advisors</i>	• Persons with the resulting tax benefit • Persons who enter into avoidance transaction for benefit of person receiving tax benefit • Advisors/promoters in respect of the notifiable transaction (and any other NAL person who is entitled to a fee) • <i><u>Note:</u> temporary injunctive relief for legal advisors</i>	[Optional]: Person with the resulting tax benefit No filing obligation for any other party or an advisor/promotor

Summary of Disclosure Rules (cont.)

	Reportable Transactions	Notifiable Transactions	GAAR
Filing Deadline	90 days after committing to or entering into the transaction	90 days after committing to or entering into the transaction	Filing-due date for the taxation year in which the transaction occurs (but can be filed up to one year late)
Consequences	Penalty: • Standard: \$500/week up to greater of \$25K and 25% of tax benefit • Corp w/ \$50M assets: \$2K/week up to greater of \$100K and 25% of tax benefit • Advisors/promoters: \$10K plus \$1K/day (max. \$100K) plus 100% of fees Indefinite extension to normal reassessment period (NRP)	Same as Reportable Transactions	Penalty: If GAAR applies and transaction/series was not earlier disclosed, 25% of the associated tax savings (less any gross negligence penalties assessed in respect of the transaction or series) Three-year extension to NRP (or one year if disclosed late)
Due Diligence Defense	No penalty if exercised reasonable degree of care, diligence & skill to prevent failure to file	No obligation to file for: • Advisors/promoters: unless they know or reasonably expected to know transaction was notifiable • Others: if exercised reasonable degree of care, diligence & skill to determine whether notifiable	No penalty if reasonable to conclude the GAAR would not apply based on identical or almost identical CRA administrative guidance or case law

Disclosure Rules – Experience

- Witnessing regular disclosure to CRA under *reportable transaction* rules
 - Ex.: trust rollouts with beneficiary indemnities; complex M&A deals
 - Practical issues abundant
- Limited GAAR reporting (to date)
- Impact of new voluntary disclosure program (VDP)

Concluding Thoughts

- Few significant legislative proposals released over past 12 months
 - To be seen if trend continues with 2025 Budget
- Conversely, increased complexity and number of issues on per-file basis
- Cocktails help!

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