



Be Careful What You Say Post-Audit: Tax Court of Canada Confirms Minister Can Raise New Grounds for Reassessment

March 2023 Tax Alert

In a tax dispute before the Tax Court of Canada, taxpayers may mistakenly assume the Minister is limited to the grounds for the (re)assessment raised at the time of the (re)assessment. However, the *Income Tax Act*, allows the Minister to raise alternative grounds, during the objection and appeal stages. As such, taxpayers should be mindful that, what they disclose during a tax dispute, could open the gates for new and/or additional grounds for the (re)assessment.

In the recent Tax Court of Canada decision of *Polarsat Inc. v HMK*, the tax dispute was in regards to whether the taxpayer was entitled to claim an investment tax credit. The Minister had issued a reassessment denying the investment tax credit on the basis that the taxpayer was not a Canadian Controlled Private Corporation (CCPC). During the appeal and after the examinations for discovery, the Minister decided it wished to expand the grounds for the reassessment. In particular, in review of the evidence adduced during the dispute process, the Minister decided that the reassessment was also issued on the basis that the General Anti-Avoidance Rule (GAAR) applied to deny the investment tax credit. GAAR permits the CRA to deny a tax benefit, which results from transactions designed to abusively avoid tax. The Minister had considered relying on GAAR at the

Authors

Christine Ashton
905-940-0526
cashton@wvllp.ca

Avery Kalpin
905-944-2950
akalpin@wvllp.ca

Our Tax Lawyers



Josh Harnett



Robert Martini



Avery Kalpin

Our Tax Litigators



Christine Ashton



Doug Langley

audit stage, but did not end up doing so.

To expand the grounds for the reassessment, the Minister brought a motion to amend the Reply (being the Minister's written pleading/submissions). In considering the motion, the Tax Court of Canada focused on subsection 152(9) of the *Income Tax Act*. This subsection essentially allows the Minister to advance any alternative basis or argument for a (re)assessment, provided it does not cause evidentiary prejudice to the taxpayer. The taxpayer argued that adding GAAR as a ground would cause evidentiary prejudice, as it does not have access to the shareholders involved in the relevant transactions, which occurred 20+ years prior. The Tax Court of Canada was not convinced. The Tax Court of Canada held that the taxpayer's CEO, who was going to testify about the relevant facts in regards to the originally pled grounds, could similarly testify about the facts in regards to GAAR. There was no clear need for these shareholders and accordingly there was no evidentiary prejudice.

In review of the above, it is important for taxpayers to be mindful that, even after the audit is concluded and the (re)assessment is issued, the Minister can rely on new and/or additional grounds for the (re)assessment during the tax dispute process. As such, if a document or statement would expose a potential new and valid ground for the reassessment, a taxpayer should carefully consider the implications before disclosing it. If the Minister does advise it plans to add a new ground for the (re)assessment, then the taxpayer should thoughtfully consider what evidentiary prejudice would exist. For example, have documents that would refute the ground been lost? Have witnesses who are best able to speak to the transactions passed away? If there is no evidentiary prejudice, then the Minister will undoubtedly be permitted to expand the grounds for the (re)assessment.

For more information or to discuss any current tax disputes with the CRA, [please speak with one of our tax litigators.](#)

About Us

Our law firm is your strategic business partner.

For over 30 years, WV LLP has been a leader in business and tax law. Since its inception, WV LLP has been known for working strategically with our clients, using our knowledge and experience to provide prompt, practical and cost-effective solutions.

As a full service firm with over 25 lawyers, we are able to deliver practical, value-added legal services to address our clients' business needs. We recognize that there are many facets to a business and, as a law firm, we are ready to assist in all areas.

LEARN MORE



Our Legal Insights

Our law firm is here to keep you up to date in regards to legal developments and strategies.

We regularly host webinars, to ensure our clients are informed about the latest legal developments and strategies. We also have a library of on-demand webinars available for clients to view, at their leisure.

LEARN MORE

905.940.8700

information@wvllp.ca

60 Columbia Way, 7th Floor | Markham, Ontario | Canada L3R 0C9

This email was sent to << Test Email Address >>

why did I get this? [unsubscribe from this list](#) [update subscription preferences](#)
Wilson Vukelich LLP · 60 Columbia Way, 7th Floor · Markham, ON L3R 0C9 · Canada