



Federal Court of Appeal Confirms the CRA Not Limited To Three Years To Assess Family Real Estate Activities

November 2023 Tax Alert

In recent years, the CRA has increasingly paid attention to business income reported and expenses claimed further to dealings with family and friends. At times, the CRA takes the position that the business has not dealt with the family member or friend as though they were arm's length. As a result, there may be shareholder benefits assessed, expenses denied, etc. In some instances though, the CRA may take the position that there is actually no business – that the taxpayer is simply an individual providing things to family and friends.

In the recent Federal Court of Appeal decision of *Peach v. Canada*, the taxpayer owned three real estate properties and claimed significant capital losses on his income tax returns. The taxpayer had rented his properties to his sons at a rate far below market rate and later characterized the anticipated rental losses as capital losses. The taxpayer also reported substantial expenses associated with his consulting business, which had a client base consisting primarily of his family and friends. These consulting business expenses were almost \$20,000, which he incurred further to the reported revenue of only \$27. The Federal Court of Appeal upheld the decision of the Tax Court of Canada. As the rental activities were not further to the pursuit of profit, all rental income and expenses should be removed from the taxpayer's income. Further, as the consulting business was not operated as a

Authors

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

Mithushan Kirubananthan
Articling Student

Our Tax Lawyers



Josh Harnett



Robert Martini



Avery Kalpin

Our Tax Litigators



Christine Ashton



Doug Langley

reasonable “commercially-minded business person would behave”, the expenses should be disallowed.

In rendering this decision, the Federal Court of Appeal also addressed the timing of the CRA’s reassessment. In particular, the CRA had reassessed the taxpayer a few months beyond the normal three-year reassessment period established by para. 152(3.1)(b) of the *Income Tax Act*. To go beyond the three-year period, the CRA must establish that the taxpayer made neglectful, careless, or wilful misrepresentations. The Tax Court of Canada held and the Federal Court of Appeal agreed, the taxpayer did not act as a wise and prudent person, but instead the very opposite. Accordingly, the Minister was permitted to go beyond the three-year period.

In review of the above, it is important for taxpayers to tread carefully when engaging in business dealings with family and friends. The goal of the dealings should remain to pursue profit. The terms of the business agreement should be reflective of market terms. And the expenses incurred should be reflective of what a commercially-minded business person would incur. The *Peach* decision also serves as a helpful reminder that the CRA is not always limited to three years to reassess. Any taxpayer failing to exercise reasonable care risks the potential of a reassessment beyond the three-year window.

For more information or for assisting with addressing a reassessment related to family dealings, please speak with one of [our tax lawyers or 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