



# LITIGATION NOTE

April 6, 2020

## Impact of COVID-19 on Tax Disputes

There have been various administrative concessions made by the courts and the Canada Revenue Agency (“CRA”) in response to the widespread slowdown of business activity occasioned by the COVID-19 pandemic. We consolidate and summarize here changes that specifically impact federal tax disputes and CRA audit activity.

### 1. CRA

CRA offices are closed until April 5, 2020. Given the ongoing public health crisis, in our view it is likely that this date will be extended. In the interim, the CRA has indicated the following.

#### *i. Filing Deadlines*

The 2019 T1 income tax return filing date for individuals is extended until June 1, 2020 and the payment deadline is extended to September 1, 2020. Corporations that would have needed to file income tax or GST returns, or make payment between March 18, 2020 and June 1, 2020, also may file by June 1, 2020 and make payment before September 1, 2020. Certain other extensions can be found on the [CRA’s website](#). No interest or penalties will apply provided those deadlines are met.

#### *ii. Tax Audit Activity*

The CRA suspended most tax audit activity for four weeks on March 18, 2020. The CRA generally will not contact small or medium sized businesses to initiate post-assessment income tax or GST audits during that time period. Audit activity may continue for high risk and exceptional cases, or cases involving “high risk” GST refunds. We expect audit activity to continue in any circumstance where a reassessment soon may be statute-barred.

No action is required with respect to any CRA correspondence, including deadlines for response or provision of documents, as verification work is currently on hold.

No change has been suggested or proposed at this time to suspend the passage of time for the purpose of calculating the normal reassessment period in subsection 152(3.1) the *Income Tax Act* (“ITA”) or the period for assessment in subsection 298(1) of the *Excise Tax Act* (“ETA”). This means that the normal reassessment periods for taxation years may continue to expire. Since the CRA

does not have the ability to modify these timelines on its own, any change to the applicable statute-barred dates would need to be made by way of legislative amendment to the ITA or the ETA.

*iii. Objections*

For any objection due to be filed on March 18, 2020 or later, the CRA has indicated that administratively it will be providing an extension to June 30, 2020.

With respect to the processing of objections, only objections related to Canadians' entitlement to benefits and credits will be reviewed and processed as they are considered critical services. Objections relating to other matters are held in abeyance, and no collections action will be taken with respect to those accounts (where collection otherwise is allowed by statute). No end point for these indefinite postponements has yet been identified.

*iv. Collections*

Collections activities on new debts has been suspended until further notice. The CRA directs attention to negotiation of payment arrangements and applications for taxpayer relief as potential remedies for taxpayers who cannot meet their tax obligations. Interest on tax debts continues to accrue and may be waived by way of a taxpayer relief application. Collections officers appear to be available by phone between 8 AM and 4 PM at 1-800-675-6184.

## **2. Tax Court of Canada ("TCC")**

The TCC is closed for the transaction of any business until further notice.

*i. Institution of Proceedings*

Notices of appeal still must be filed within 90 days of the issuance of a notice of confirmation or notice of reassessment, as the case may be. The TCC has no statutory jurisdiction to extend these deadlines. Filings can be made electronically or by fax to 613-957-9034. As the TCC is closed, such filings presumably will not be processed or served on the Department of Justice until operations are resumed.

*ii. Other Deadlines*

On March 23, 2020, the TCC issued a Practice Direction and Order excluding the period beginning on March 16, 2020 and ending on May 1, 2020 (47 days) from the computation of time under the *Tax Court of Canada Rules (General Procedure)*, all other rules made under the *Tax Court of Canada Act* and any order or direction of the TCC made prior to March 16, 2020. This should apply to all timeline orders

such that all deadlines in those orders falling within the relevant period are postponed for at least 47 days.

iii. *Judicial Sittings and Conference Calls*

On March 23, 2020, Chief Justice Rossiter issued a Notice to the Public and the Profession advising that all TCC sittings and conference calls scheduled between March 30, 2020 and May 1, 2020 are cancelled. Sittings scheduled beyond May 1, 2020 are at this time intended to proceed, subject to any further order. The Chief Justice has indicated that he will reassess the circumstances on April 14, 2020 and presumably take any additional actions he considers are advisable at that time.

### 3. Federal Court

On March 17, 2020, the Federal Court issued a Practice Direction and Order pursuant to which all hearings scheduled to be heard between March 17, 2020 and April 17, 2020 were adjourned. General sittings during that period are cancelled. Urgent matters and matters that must proceed for exceptional reasons are exceptions to the suspension. Timelines pursuant to orders of the Court made prior to March 18, 2020 are suspended during this suspension period.

Statutory deadlines to make applications to the Federal Court (such as applications for judicial review of the CRA's exercise of discretion) cannot be varied absent the amendment of the applicable statute. Therefore, such applications should be brought on time, electronically where possible.

### 4. Federal Court of Appeal ("FCA")

On April 2, 2020, the FCA issued a Notice to the Parties and the Profession. Taken together with previous extensions, the period between March 16, 2020 and May 15, 2020, inclusive, will not be considered in computing time periods under the *Federal Courts Rules*. Matters scheduled to be heard during the suspension period are adjourned. Urgent matters can be heard remotely.

Statutory deadlines to appeal to the FCA remain in place, so taxpayers should be attentive to those deadlines and should file electronically where possible.

### 5. Court of Queen's Bench of Alberta

Civil matters scheduled to be heard between March 16, 2020 and May 1, 2020 are adjourned unless otherwise ordered or unless the matter is an emergency or its resolution is urgent. While courthouses are open, access is generally restricted to persons involved in a proceeding. All filing deadlines under the *Alberta Rules of Court* are suspended until May 1, 2020, with the exception of rules applying to the commencement of proceedings.

The Minister of Justice and Solicitor General recently issued a Ministerial Order suspending limitation periods under various statutes between March 17, 2020 and June 1, 2020. Periods of time in which any step must be taken are suspended during that period, subject to the discretion

of the court, tribunal or other decision maker overseeing the proceeding. Statutes covered by the order that might be relevant to tax matters include the *Estate Administration Act*, the *Limitations Act* and the *Trustee Act*.

**We are here to help.**

Our tax litigation and dispute resolution lawyers at Felesky Flynn are committed to monitoring these developments so our clients can focus on their businesses and their families at this turbulent time. If we can be of assistance in relation to any matters concerning the above, please contact us.