



Presented by:

Vinay Khosla, M. Acc., CA

Bateman MacKay LLP

Phone: 905 593 3033 ext. 212

Mobile: 416 420 7753

Email:

vkhosla@batemanmackay.com

CIMA 2013 TAX UPDATE

CASE LAW UPDATE
FEBRUARY 23, 2013

Bateman MacKay

*chartered accountants
& business advisors*

Triad Gestco Ltd v. HMQ, 2012 FCA 258

- ❑ Taxpayer realized a capital gain
 - ❑ Sophisticated series of transactions to realize a “paper” capital loss
 - ❑ Transfer of \$8 million of assets to corporation for common shares
 - ❑ Corporation pays stock dividend of 80,000 preferred shares (redeemable for \$8 million)
 - ❑ Taxpayer sells its common shares to a Family Trust for \$1.00 realizing \$8 million capital loss
 - ❑ FCA ruled the General Anti Avoidance Rule (GAAR) applied; looked at the intention of the rules to tax the increase in “economic power” which is unaffected by paper loss
- Business Advice for Tomorrow.***

Cassidy v. HMQ, 2011 FCA 271

- ❑ Issue: Sale of Land > 1/2 hectare and principal residence exemption
- ❑ Zoning restrictions precluded subdivision from date of purchase March 1994 to May 2, 2003
- ❑ May 23, 2003 agreement for sale subject to rezoning approval signed; deal closed November 2003
- ❑ CRA reassessed gain on land > 1/2 hectare was taxable
 - ❑ CRA's position: Land unnecessary for use/enjoyment of residence
- ❑ FCA – principle residence formula requires annual determination, not just a time of disposition

***Business Advice for
Tomorrow.***

Cassidy v. HMQ

- ❑ Issue: deductibility of farm losses
- ❑ ITA limits farm losses to \$8,750 unless farming income is chief source of income (aka: the “combination” rule)
- ❑ Hobby farms – losses non-deductible
- ❑ Taxpayer’s primary losses from the horse-racing business from his other income in 2000 and 2001
- ❑ Judge ruled that if taxpayer places significant emphasis on both his farming and non-farming sources of income, there is no reason that such a combination should not constitute a chief source of income

Cassidy v. HMQ cont'd

- ❑ Factors to be considered:
 - ❑ The capital invested in farming and the second source of income
 - ❑ The income from each of the two sources of income
 - ❑ The time spent on the two sources of income
 - ❑ The taxpayers ordinary mode of living, farming history, and future intentions and expectations
- ❑ Farm losses allowed

Pluri Vox Media Corp. v. HMQ, 2012 FCA 295

- ❑ Sole shareholder of Pluri Vox received fees as independent contractor
- ❑ CRA reassessed Pluri Vox regarding failure to withhold source deductions; shareholder actually an employee
- ❑ TCC concluded shareholder an employee
 - ❑ Business and related risks were with Pluri Vox
- ❑ FCA – individual can be both employee or independent contractor
- ❑ Shareholders can work in different capacities
- ❑ FCA affirmed TCC decision
 - ❑ No contract
 - ❑ No HST charged
 - ❑ It was Pluri Vox's business

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Tomorrow.***

Fundy Settlement v. Canada (2012 SCC 14)

- ❑ Issue: residence of a Trust
- ❑ Normally consider residence to be residence of trustees
- ❑ Barbados trustees, Canadian beneficiaries
- ❑ Trust disposed capital property and sought refund of withholding tax pursuant to Canada-Barbados Tax treaty
- ❑ CRA deemed trust's residence to be in Canada; trustee's role appeared limited
- ❑ Court adopted approach: where the trust's "central management and control" is its residence
- ❑ CMC and Trusts – the next battleground?

J. Guidon v. HMQ, 2012 TCC 287 (TCC)

- ❑ Guidon an estate lawyer who provided tax opinion on charitable donation tax shelter
- ❑ Acted as president of charity, and signed and issued charitable receipts to donors
- ❑ G discovered legal documents to implement the structure not complete and issued a letter to donors to not claim receipts
- ❑ Promoter issued letter to donors to disregard Guidon's concerns
- ❑ Guidon assessed "Planner's penalties" by CRA

***Business Advice for
Tomorrow.***

J. Guidon v. HMQ, 2012 TCC 287 (TCC) cont'd

- ❑ Criteria:
 - ❑ False statement and
 - ❑ Knowledge statement is false (culpable conduct)
- ❑ Question arose: Planner's penalties Criminal or Civil?
- ❑ Court concluded planner's penalties criminal in nature; wrong court and Guidon afforded Charter of Rights protection
- ❑ Tax Court of Canada not the proper court to hear Guidon case

Thank You!

Vinay Khosla, M. Acc., C.A.

Tax Partner

Bateman MacKay LLP

200 – 40 Village Centre Place

Mississauga, ON

L4Z 1V9

Phone: 905 593 3033 (ext. 212)

Mobile: 416 420 7753

Email: vkhosla@batemanmackay.com

www.batemanmackay.com

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