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Aging Boomers Up the Estate Planning Ante – Part I

I remember where I was when Kennedy was shot; I watched the Beatles live on the *Ed Sullivan Show*. Even so, I bristle when I see ads pandering to me and my fellow Boomers with old recordings fit for 8-tracks, not iPods. But, when I saw a recent issue of a legal magazine featuring estate planning for greying Boomers, things began to sink in: when it comes to inheritances, we are rapidly going from the receiving end to the giving end.

What's more, the usual estate planning content – updating your will, doing a power of attorney, plus a reverse mortgage here and there – misses a big point, namely that the demise of the older generation will involve the greatest wealth transfer in history (and there will be more than chump change left over when we Boomers ourselves leave the building).

Trouble is, this enormous wealth transfer is converging with an increasingly complex legal environment, particularly in the income tax area. This article presents some estate planning issues that will become increasingly important as wealthy Boomers age. As will be seen, the issues in play go far beyond traditional estate planning considerations.

U.S. Emigration

My generation and those which follow have unprecedented mobility, especially to south of the border. If the emigrant is from an affluent family, it is possible, if not likely, that he or she will have an interest in an investment-type company, perhaps real-estate related or the holdco of an operating company which has generated excess cash. Whether the interest is direct or indirect (e.g., through a family trust), the U.S. CFC and PFIC[1] rules, pertaining to "passive" income earned by foreign corporations, potentially come into play. Often, there will be harsh U.S. penalties, onerous reporting requirements and the like.

Inside

Until a few years ago, there was very little written on this. But the issues have gradually sunk in. Many of the physicians who went to Texas years ago are now aging Boomers; and new problems will arise from the U.S. high-tech companies now grabbing young Canadian graduates. Soon we Boomers will start to relocate to the sunbelt, along with our shareholdings – hand-in-hand with serious U.S. tax consequences to the unwary – not to mention the serious *Canadian* consequences stemming from ceasing to be resident: the departing shareholder must either cough up capital gains tax on the shares or furnish acceptable security to the CRA.

Whether the family member has gone to the States or elsewhere, the distribution of shares and most other assets from a family trust is now a taxable event based on the value of the shares at the time of distribution – whether or not the shares are taxable Canadian property.[2] Tax on distributions to U.S. residents can be deferred by a distribution to an unlimited liability corporation rather than the U.S. resident. It may be prudent to draft new trusts with this procedure in mind.

Canadian Beneficiaries of Trusts and Estates

The transfer of wealth to Canadian Boomers may be from abroad. If a Canadian is a beneficiary of a non-resident trust (including an estate), the foreign investment entity (FIE) proposals potentially apply.[3] If applicable, these proposals typically impose an income inclusion calculated by applying an imputed interest charge (currently 7%) to the "designated cost" of the interest in the non-resident entity. The FIE proposals include an exemption for trusts which are completely discretionary; however, most discretionary trusts include "fail safe" clauses, which specify pre-set allocations/distributions, that are operative in the event of a failure to exercise discretion.[4] A recent article in an Ontario Bar Association tax section newsletter[5] alludes to an example where a lone Canadian resident is one of many beneficiaries of a large *inter vivos* trust established, say, in Hong Kong. If there are no other Canadian beneficiaries, the usual FIE calculation may necessitate applying the deemed interest rate to the "designated cost" of the trust, which can be based on the trust's entire gross assets.[6] And as I indicated in a fairly recent article,[7] similar rules also apply to a Canadian beneficiary of a non-resident estate.[8]

Also, as a result of the non-resident trust proposals, transactions between a Canadian resident and a non-resident trust/estate – even if indirect – must be reviewed very carefully. Various deemed contribution provisions may result in the trust being taxed like a Canadian resident – e.g., on its worldwide income,[9] if there is a "resident contributor".

As can be seen from the foregoing, advising a Canadian beneficiary of a non-resident trust or estate may require nothing less than a detailed knowledge of the non-resident trust and FIE proposals – some of the most complex legislation around.

Deemed Disposition Rule – Twists for Generation Xers

The fact that there is a deemed disposition of shares and other assets passing to another generation is nothing novel (although the amount of taxes collected from this rule in coming years may be). What may change is the post-mortem planning strategy that may be best. In the past, the tax resulting from the deemed disposition rules was looked at as a wasted expense, especially where the underlying assets, e.g., the family business, would continue to be held by the next generation.

But is it? The affluence of recent years has changed attitudes, particularly the offspring of wealthy Boomers. The spectre of carrying on family businesses is often looked at as a burden rather than a privilege; instead, there may be increasingly more motivation to seek a more enjoyable life style, funded by family wealth. Where this is held at the corporate level, there will be more pressure to extract these assets, to fund lifestyle choices. In these circumstances, the deemed disposition rules may not result in the "wasted tax" that they might have been a generation ago: the terminal-period capital gains tax could be an efficient way to tax-pay future distributions of cash and other cor-

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porate assets in order to meet these objectives. Along the same lines, practitioners should determine whether a corporate-level sale of the family business or other assets is in the cards. If so, techniques which involve the bumping of cost base as part of a post-mortem procedure may be attractive, especially if a capital dividend account or refundable tax is generated, as these tax accounts will allow tax-efficient distributions.

Continued next month.

– David Louis, B. Com., J.D., C.A., tax partner Minden Gross LLP, a member of MERITAS Law Firms Worldwide.

Notes:

[1] Respectively: "controlled foreign company" and "passive foreign investment company".

[2] See subsection 107(5).

[3] See the definition of "specified interest" in proposed subsection 94.1(1). Of course, the trust must be a foreign investment entity to begin with. Notably, this would not be the case if the trust did not run afoul of the tests in paragraphs (*b*) and (*c*) of the "foreign investment entity" definition, pertaining to carrying value of investment properties or "principal business". However, most trusts/estates would meet these tests.

[4] Another possible avenue of temporary relief is the "successor beneficiary" exception, whereby income or capital can be received only after the death of an individual who is a contributor to the trust, or in circumstances where the individual may be related to the contributor.

[5] "Discretionary Trusts and the FIE Rules", James W. Murdoch, *Taxation Law*, Volume 17, No. 2, Ontario Bar Association. As stated in the article, the previous round of revisions exempted trusts where all amounts depend on the exercise, or failure to exercise, discretion. The latest revisions delete failure to exercise, which is the precondition for clauses which stipulate "fail safe" allocations/distributions.

[6] As the article indicates: "there is a special rule for determining the designated cost of trust interests that effectively gives the holder of the interest a designated cost equal to the trust's cost amount in its property (other than 'restricted property') plus the fair market value of any restricted property. This amount is then divided by the number of Canadian-resident beneficiaries who similarly hold a participating interest in the trust and who are identified by the taxpayer in prescribed form." See proposed subparagraph 94.1(2)(*c*)(ii). There are a number of ambiguities and anomalies in this provision, which I will not discuss in this article. Proposed paragraph 94.1(2)(*c*) deems designated cost to be the greater of this amount and the designated cost otherwise determined. In the case of an interest in a trust or estate, clause F (or D) of the proposed "designated cost" definition in subsection 94.1 would typically apply, so that, but for proposed subparagraph 94.1(2)(*c*)(ii), the designated cost otherwise determined would be based on the fair market value of the beneficiary's interest.

[7] "Heartbreak Hotel – Foreign Estates and The FIE Rules", by the author, TAX NOTES No. 513, October 2005.

[8] The definition of "trust" in proposed subsection 94.1 indicates that "trust" includes, for greater certainty, an estate. The definition of "exempt interest" is to be expanded to include a participating interest in a non-resident entity if the non-resident entity is, during the period in its taxation year that the taxpayer held the participating interest, a testamentary trust that is an estate that arose on and as of a consequence of the death of the individual, and the particular time is no more than twelve months after the death of the individual. The twelve-month period can be extended by the Minister.

[9] See "NRT Rules: Harsher Than You Think", by the author, TAX NOTES No. 502, November 2004. For a detailed discussion, see "Observations on Section 94", by William Innes and Dessislav Dobrev, 2006 AC No. 36, which includes a list of transactions with a non-resident trust. Proposed subparagraph 94(3)(*a*)(iv) provides that a trust subject to (proposed) section 94 is resident for the purposes of proposed section 94.1 and is therefore excluded from the definition of "non-resident entity" in proposed subsection 94.1(1).

Multiple Wills as a Tax Shield

In this era of increasing globalization, it is quite common for Canadians to own property in one or more foreign jurisdictions. Vacation homes, investments, family abodes in the "old country", etc. In such circumstances, it is generally understood that multiple wills are desirable. Having two or more wills, each covering assets in a separate jurisdiction, serves to facilitate the smooth and timely administration of the individual's estate. There should be no issues regarding the acceptability of the will governing assets in a foreign jurisdiction since it will have been prepared in accordance with the laws of that jurisdiction. And, should problems arise in regard to one will, the existence of one or more "parallel" wills means the administration of the other will(s) need not be impeded. Of course, in recent years, multiple wills are often thought of as means of avoiding probate fees.

It is, perhaps, less widely recognized that multiple wills may serve to protect a testator's Canadian assets from foreign tax claims.

Canadian Estate Not Subject to Taxes on French Property

The case of *Barna Estate*, 1990 CanLII 1228, 40 E.T.R. 89, (B.C. S.C.),[1] involved a woman, Gertrude Craik Barna, (the deceased) who was born in the United States but died in France in 1987, where she had been living continuously for the past 40 years. She died owning real property in France and Monaco and substantial financial assets in Canada. She had no assets or property in the United States. The deceased was predeceased by her husband and she had no children. The deceased left two wills: "the French will" and "the Canadian will". The French will was a holograph will; it dealt with the real property in France and Monaco. The Canadian will was a formal will executed in accordance with the laws of British Columbia; it dealt with cash, bonds, debentures and stocks in Canada.

None of the beneficiaries under either of the wills were related to the deceased. Under the laws of France in effect at the time, if the deceased was domiciled in France at the date of her death (it was accepted that this was the case here) beneficiaries not related to the deceased could be liable to a tax at the rate of 60% of the value of the assets of the deceased's worldwide estate.

Canada Trust, as the executor named in the Canadian will, brought an application for instructions as to whether it should pay all debt and succession duties with respect to property passing under both the Canadian and French wills or whether it should pay only the death and succession duties payable in Canada for property passing under the Canadian will. Addressing this issue entailed determining: (i) whether the Canadian will was to be interpreted according to the laws of France or Canada and (ii) what interpretation was to be given to the payment of taxes clause contained in the Canadian will.

The Applicable Jurisdiction

There is a general rule that a will is to be interpreted in accordance with the law intended by the testator. Further, there is a presumption that the testator's intention is for the law of the jurisdiction of the testator's domicile at the date of the execution of the will to apply. In this case, the testator was domiciled in France in 1984 on the date of the execution of the Canadian will and, therefore, according to the presumption, the will should be interpreted according to the laws of France. However, this is a rebuttable presumption, and only stands in the absence of indications to the contrary. In fact, the Canadian will clearly demonstrated that the deceased intended it to be interpreted according to the law of Canada and in particular the law of British Columbia. This could be seen in a number of the clauses. First, the deceased expressly declared that this was her "Canadian will". Further, she stated: "It relates only to all my property, both real and personal, situate elsewhere than in France or Monaco". Accordingly, Canadian rather than French law was applicable.

Interpretation of the Debts and Taxes Clause

The Court opined that, where the testator's words are clear and are broad enough to include the payment of foreign duties out of the domestic estate, then such should be done. In itself, the relevant clause in the Canadian will was very broad. In it, the deceased directed her trustee to pay "all estate and inheritance and succession and probate and other death taxes, duties and fees (whether payable in respect of estates or interests which fall into possession at my death or at any subsequent time and *wherever leviable or payable*)." [Emphasis added.] However, the Court held that these words had to be interpreted in light of the fact that the deceased's property in France and Monaco was specifically excluded from the purview of the Canadian will. Accordingly, the trustee was only required/authorized to make payments in respect to property passing under the Canadian will.

Canadian Estate Not Subject to Taxes On Scottish Property

The facts of *Re: Fudger* (1985), 18 E.T.R. 12 (Ont. H.C.) were very similar to those of the *Barna* case, and so was the outcome. In this case, the deceased died in Scotland in 1980 leaving property in Canada valued at $817,821 and property in Scotland valued at approximately $160,000. Her Canadian property was disposed of by a Canadian will while her Scottish property was disposed of by Scottish instruments. The U.K. Inland Revenue claimed capital transfer tax in respect of all of the assets, Canadian as well as Scottish, of the testatrix's estate. Under the U.K. tax law, both the Canadian and the Scottish executors would be liable to pay the assessed capital transfer tax. The claim for the tax far exceeded the value of the Scottish property.

The executor of the Canadian will sought the direction of the court regarding payment of taxes arising in regard to the U.K. property. The Court held that the executor of the Canadian will was not required to pay out of the capital of the Canadian estate any U.K. tax. Here again, a generally worded clause regarding the payment of all debts, duties, taxes, etc. was qualified by an opening clause that specifically restricted the scope of the Canadian will. In this case, the deceased stated that the Canadian will was limited "to all my real and personal estate in the Dominion of Canada". The court concluded that the deceased did not "intend to impose upon her Canadian executor the duty of paying duties other than the duties in connection with any property passing under the Canadian will."

The Revenue Rule

At common law, there is a centuries-old rule known as "the revenue rule". Broadly stated, the revenue rule provides that the courts of one country will not enforce the revenue laws of another country. The rule can be traced back to 1775, when Lord Mansfield proclaimed simply that "no country ever takes notice of the revenue laws of another." The revenue rule is premised on the theory that the enforcement of a tax claim is an extension of the sovereign power that imposed the tax. Therefore, to attempt to enforce a claim for taxes in a foreign country is to infringe on the sovereignty of that country. The leading case in Canada on the revenue rule is *United States of America v. Harden*, 63 DTC 1276 (S.C.C.).[2] In this case, the plaintiff argued that the "revenue principle" did not apply if the foreign country had obtained a judgment for the taxes in its domestic courts and sued on that judgment in Canada. However, the Supreme Court of Canada agreed that it was the duty of the court to go behind the foreign judgment to see if it related to foreign taxes: it did so and refused to enforce the U.S. judgment. (By the same token, the Canadian government cannot go to a foreign jurisdiction and there sue a person found in that jurisdiction for taxes for which he has been declared to be liable in Canada.)[3]

Similarly, indirect revenue claims made through bankers, liquidators, executors, trustees, and others acting in a fiduciary capacity will not generally be enforced by Canadian courts.[4] Accordingly, provided the relevant document was appropriately drafted, as it was in the *Barna* and *Fudger* cases, paying a deceased's foreign tax bill would be a real *faux pas*. As one commentator has suggested:[5]

> . . . the payment of foreign taxes by persons acting in a fiduciary capacity amounts to a waste of the assets under administration for which they may be held personally liable. Paying foreign taxes is no different from paying statute-barred and other unenforceable claims.

Something to remember, both in drafting wills and in administering estates.

The Canada–U.S. Tax Treaty

The revenue rule remains generally valid in Canada; albeit, in a given case, it may be affected by the applicable tax treaty. Of Canada's tax treaties, I believe that with the United States goes furthest in departing from the common law. Amendments to the Canada–U.S. Treaty in 1995 introduced Article XXVI A, dealing with assistance in the collection of taxes. It provides that, when one state (the "Applicant State") has "finally determined" a revenue claim

under its domestic laws, it may apply to the other state (the "Requested State") for assistance in collection of the claim. A revenue claim is "finally determined" when all administrative and judicial rights of the taxpayer to restrain collection in the Applicant State have lapsed or been exhausted. The Requested State is given discretion as to whether to accept a particular application for assistance. However, if the application is accepted, the Requested State is required to grant assistance under its existing procedures as though the claim were its own claim that had been finally determined under its own laws.

Even under the Canada–U.S. Tax Treaty, however, the revenue rule survives in part. An important limitation on the above provision provides that assistance will not be given in regard to a claim against an individual who was a citizen of the Requested State during the period to which the revenue claim relates. In other words, Canada will not assist the United States in collecting U.S. taxes owed by Canadian citizens, and *vice versa*. The same applies with regard to trusts, estates or companies which derive their status from the laws of the Requested State.

– Robert Spenceley, MA, LLB

Notes:

[1] This case was brought to my attention by Fiona Hunter, "Multi-Jurisdictional Wills", a paper posted on February 2, 2007 on the Web site of the Continuing Legal Education Society of British Columbia.

[2] See also *British Columbia Electric Co. v. The King* (1946), 2 DTC 839 (P.C.).

[3] See *Estate of A.M. Collings Henderson v. Minister of National Revenue and The Bank of New York v. Minister of National Revenue*, 73 DTC 5471 (F.C.–T.D.).

[4] Craig M. Jones, "Conflict of Laws in Estate Planning", *Report of Proceedings of Fiftieth Tax Conference*, 1998 Tax Conference (Toronto: Canadian Tax Foundation, 1999), 37:1–31, cites the following cases to support this position: Banker: *Van deMark et al. v. Toronto-Dominion Bank* (1989), 68 OR (2d) 379 (HCJ); Liquidator: *Peter Buchanan LD and Macharg v. McVey*, *R v. Terry*, [1996] 2 SCR 207, at 218-19; Trustee/Executor: *Stringam v. Dubois* (1992), 135 AR 64 (CA); *Re Fudger* (1984), 18 ETR 12 (HCJ); *Tremblay v. Bank of Nova Scotia Trust Company (Caribbean) Limited (1997)*, nos. 1278-81 of 1996, High Court of Barbados (per Payne J). *Scottish National Orchestra Society Limited v. Thomson's Executor*, [1969] SLT 325 (Outer House); *Jones, No and Others v. Borland SSC and Others* (1969), 4 SA 29 (WLD).

[5] *Ibid.*, p. 39:26.

Individual Liable as a *De Facto* Corporate Director

Hartrell v. The Queen, 2006 DTC 3548 (Tax Court of Canada)

The courts have held that individuals can be liable under the directors' liability provisions in both the *Income Tax Act* (the "Act") and the *Excise Tax Act* in circumstances where they are found to be *de facto* directors of corporations (see, for example, *The Queen v. Wheeliker*, 99 DTC 5658). In *Hartrell*, the issue was whether an individual who invested in a corporation was personally liable for the corporation's failure to remit employee source deductions in 1998 and 1999. The appellant was never formally appointed as a director of the corporation.

The appellant was a chartered accountant who decided to invest in a franchise in the American Professional Soccer League with a client and another individual. In April 1997, a corporation was established to operate as the soccer club. Although the appellant testified that he was not advised of the incorporation of the club and did not give any instructions to the lawyer who handled the incorporation, the Court held that the appellant was aware that the club had been established, given that he became a signing officer on the club's bank account and was involved in the organization and operation of the club.

The lawyer who incorporated the club was listed as the first director and incorporator, and requested instructions regarding the completion of the organization of the company. No instructions were provided, however, and no shares were ever issued and no replacement directors were appointed. The lawyer testified that he was not aware that the corporation began operating and stated that, if he had known, he would have insisted on being replaced as a director.

A bank account was opened for the club in April 1997 and the appellant as well as the two other investors were represented as directors in the banking documents. The appellant was also stated to be the treasurer of the club. There was no evidence that the appellant was aware that the banking forms listed him as a director or that he had ever held himself out to the bank as a director.

The club began operations in 1997, but did not do well financially and the three investors advanced additional amounts to fund the team. At some point during the first season, the third investor decided not to continue funding the club. The appellant and his client agreed to continue funding the team and advanced additional funds in 1998. In that year, the club failed to remit income tax withheld at source. The appellant testified that this was the result of a bookkeeping error which was only identified at the end of the year. Although subsequent source deduction payments were made on a timely basis, nothing was done to remedy the existing shortfall. Over the course of 1998 and 1999, the working relationship between the appellant and his client deteriorated. This led the client to withhold contributions he had agreed to make to the club in 1999, and in August 1999, he refused to make any further contributions. The appellant was not given any advance notice of this decision and only became aware of it when the bank refused to honour cheques issued by the club, including source deduction remittance cheques. This resulted in additional unremitted source deductions.

The appellant was assessed by the CRA on the basis that he had represented himself in the banking documents to be a director and was, therefore, a *de facto* director. The Court, however, noted that there was no evidence that the appellant was aware of that representation. The Court stated that the issue in circumstances where a corporation has not been properly organized and the only director of record plays no part in the business is whether those persons who are involved in directing the affairs of the corporation have, in fact, taken on the role of a director. Liability

will apply whether or not such individuals have explicitly represented themselves as directors to any third party.

The Court found that the role played by the appellant in the affairs of the club and the degree of responsibility he assumed in its direction and management led to the conclusion that he was acting as a director. The Court held that the appellant was a directing mind of the corporation at all material times, given his extensive involvement in the management and administration of the club. There was ample evidence to establish that the appellant had oversight of the administration of the club and the appellant's assertion that he was only a passive investor was rejected by the Court. Given that the appellant performed the functions of a director, the Court found that he had acted as a *de facto* director when the failures to remit source deductions occurred. The Court concluded that the appellant was liable for the amounts that were not remitted in 1998. However, the Court held that the appellant was not liable for the 1999 shortfall on the basis that the unannounced withdrawal of promised funding by the other investor was the cause of the failure to remit and the appellant could not foresee the occurrence of this event. Accordingly, the appellant was not liable for the 1999 amount.

The decision in *Hartrell* illustrates the circumstances in which a person can be found to be a *de facto* director. The decision suggests that such a finding is more likely in a situation where a corporation lacks a proper slate of directors. Given that the CRA assessed the appellant as a *de facto* director, it is unclear why, apparently, the other significant investor was not assessed since the evidence indicated that he also played an active role in the operation of the club. This may reflect the somewhat "hit and miss" nature of how corporate directors are selected for assessment for corporate liabilities by the CRA.

The appellant has filed an appeal of the Tax Court decision with the Federal Court of Appeal.

– James Warnock, McCarthy Tétrault LLP

Stamping of Hand-Delivered Mail at CRA Local Offices – SR&ED Implications

A change in Canada Revenue Agency ("CRA") policy with respect to date-stamping hand-delivered documents has important implications for scientific research and experimental development ("SR&ED") claimants. This change is of particular concern because the CRA no longer has legislative authority to accept late-filed SR&ED claims.

CRA policy change

Every CRA local office previously provided taxpayers on-demand date-stamping for documents that were delivered by hand. This service was terminated in 2006, leaving taxpayers with two choices: drop their documents in the local CRA office mailbox or have them date-stamped by the post office. Neither guarantees that all the documents will reach the CRA taxation centre safely and be processed. Late-filed, misplaced, or lost documents could result in the taxpayer having to pay interest and penalties.

The CRA's policy change caused significant consternation. In response, on December 7, 2006, the Minister of National Revenue stated that the CRA would date-stamp envelopes, rather than the documents themselves. The Minister commented that "[w]hile CRA counter staff cannot confirm the completeness or acceptability of the contents . . . they will stamp the sealed envelope with the date of delivery, assuring taxpayers that a record of the transaction has been created".

Filing deadline for SR&ED claimants

Stamping of documents is particularly important to SR&ED Investment Tax Credit ("ITC") claimants because of the strict filing deadline. Prescribed forms T661, T2SCH31 (for corporations) or T2038(Ind) (for individuals) must be filed no later than the day that is 12 months after the taxpayer's income tax return filing due date for the year in which the SR&ED expenditure is incurred. If the SR&ED claim is not filed on time, the SR&ED ITCs will be lost. The CRA does not allow a grace period.

Change in law

Before November 17, 2005, in certain situations, a taxpayer could request that the Minister of National Revenue waive the filing deadline. However, Bill C-33, *Income Tax Amendments Act, 2006*, which received first reading in the House of Commons on November 22, 2006, eliminates this possibility. Basically, this change removes any recourse SR&ED claimants had in situations in which they were unable to file an SR&ED claim on time, even in circumstances beyond their control, such as a death in the family, fire, flood, etc.

Implications for SR&ED claimants

The Minister's December 7, 2006 announcement is problematic for SR&ED claimants. If the CRA misplaces (as has happened in the past) any of the prescribed forms or the project descriptions, the claimant will be unable to prove that a complete SR&ED claim, meeting the requirements of the law, was filed on time, because these will not be date-stamped.

In practice, the CRA Assistant Director of SR&ED could decide to accept a late-filed claim. However, this discretion would be purely administrative because the law no longer provides authority to accept late-filed claims.

File claims early

All SR&ED claimants should file claims early enough to give the CRA time to review the claims and confirm that they are in order. Otherwise, claims could be in jeopardy. In some situations, the same rules will apply to amended SR&ED claims. The Minister's December 7, 2006 announcement encourages tax filers to use the CRA's electronic services. However, at present, a complete SR&ED claim cannot be filed electronically.

– Mel Machado, PricewaterhouseCoopers LLP, Ottawa

2007 Federal Budget Date Announced

In Department of Finance News Release 2007-014, dated February 14, 2007, the Minister of Finance announced that the 2007 federal Budget will be tabled on March 19, 2007. Subscribers of the CANADA INCOME TAX GUIDE print, CD, and online will receive CCH's Budget SPECIAL REPORT containing Department of Finance documents, including the Notice of Ways and Means Motion outlining income tax proposals, and expert commentary on such proposals prepared for CCH.

Bill C-28 Receives Royal Assent

Bill C-28, the *Budget Implementation Act, 2006, No. 2* received Royal Assent on February 21, 2007 and is now S.C. 2007, chapter 2. This Bill contained most of the income tax proposals from the 2006 federal Budget. Such amendments include the changes in the taxation of Canadian dividends received by individuals, including the gross-up for eligible dividends received in 2006 of 45% with the tax credit of $^{11}/_{18}$ of the amount of the gross up. The definition of "eligible dividend" is set out in section 89. Bill C-28 also includes the extension of the rollover and deferral provsions applicable to family farm property to family fishing property. As stated in Department of Finance New Release No. 2007-017, dated February 23, 2007:

> Canadian fishers can now transfer their fishing assets to their children or grandchildren without having to pay capital gains or income taxes at the time of transfer. As well, fishers can now benefit from a $500,000 lifetime capital gains exemption if they sell their assets to anyone else.
>
> "This measure further demonstrates our government's commitment to tax fairness and supporting our resource industries," said Minister Flaherty. "Removing the tax liability faced by fishers provides immediate assistance to ease transfers of fishing property from one generation of fishers to another and enables fishers to enjoy the same capital gains tax exemptions available to farmers and small business owners."
>
> Under the measure, fishers who sell their interests in fishing licences or other fishing property will be able to use the lifetime capital gains exemption to offset the capital gains on those sales. The assets on which tax may be deferred when transferred to children or grandchildren include fishing property, fishing licences and shares in a fishing corporation. The measure is effective for dispositions on or after May 2, 2006.

The CCH *Income Tax Act* online has been updated to include all of the Bill C-28 amendments. The Department of Finance explanatory notes for Bill C-28 are included in the Historical Explanatory Notes section and are linked from the Act following the provision to which they relate.

Supreme Court Rules on Applications for Leave To Appeal

On February 22, 2005, the Supreme Court of Canada granted leave to appeal in the case of *The Queen v. McLarty*, 2006 DTC 6340. The *McLarty* case concerned the deduction of exploration expenses acquired through an investment by the taxpayer in a joint venture. The Minister had reduced the deductible amount claiming that the purchase price of the data being expensed was in excess of fair market value. The Tax Court of Canada allowed the taxpayer's appeal and the Federal Court of Appeal upheld the assessment on the basis that the taxpayer and the vendor were not at arm's length. On the same day, the Court dismissed the application for leave to appeal in the case of *Stohl v. The Queen*, 2006 DTC 2969. This case concerned the deduction of support amounts paid to third parties in respect of a former spouse. The Supreme Court also dismissed the application in the case of *St-Georges v. The Queen*, 2006 DTC 6470. This case concerned the deductibility of an amount that was a repayment of dividends declared illegally.

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