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TAX ASPECTS OF LITIGATION

Aron

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Publisher's Special Release Note 2025

The pages in this work were reissued in September 2025 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2025 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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This release adds new commentary to the content in Chapter 2 (The Tax Treatment of Damages), Chapter 4 (Disputes Between Corporations and their Shareholders), Chapter 7 (Issues in Separation and Divorce), Chapter 9 (The Deductibility of Litigation Expenses), Chapter 10 (Goods and Services Tax/Harmonized Sales Tax (GST/HST)), and Chapter 11 (Directors' Liability—The Cases and the Rules of Thumb).

Highlights

This release includes the following case law:

- **Chapter 2—Tax Treatment of Damages—Damages for Wrongful Dismissal—Employment Insurance—Care Worker—Night Shift—Change in Payment to Per-Diem Basis—Retaining Employee Status**—Where the support society provided 24/7 care for an individual, and the worker was hired primarily for the night shift, and although there was a change to pay him on a per diem basis, he retained employment status as the worker did not have “full autonomy”, and there was a common intent to continue to treat him as an employee: *James Burns Support Society v. M.N.R.*, 2025 CarswellNat 3007, 2025 TCC 102 (Employment Insurance).
- **Chapter 4—Dispute Between Corporations and Their Shareholders—Planning Considerations—Rectification—Plan to Receive Dividend on Tax-Free Basis—Accountant Mistaken as to Tax Liability of Predecessor Corporation—Rectification Not Available—Resolutions Reflecting Agreed-Upon Structure**—Where the sole shareholder of the successor corporation implemented transactions to pay off a loan while leaving the balance for him on a tax-free basis, but the transactions resulted in a tax liability for one of the predecessor corporations, thereby reducing the tax-free dividend, rectification of the corporate resolutions was not available as they accurately reflected the agreed-upon structure, and the flaw in the structure did not affect the accuracy of the written documents: *Pyxis Real Estate Equities Inc. v. Canada (Attorney General)*, 2025 CarswellOnt 925, 2025 ONCA 65, [2025] 3 C.T.C. 28, 175 O.R. (3d) 721, 2025 D.T.C. 5039, 60 B.L.R. (6th) 191, reversing *Pyxis Real Estate v. Attorney General of Canada*, 2024 ONSC 2039, 2024 CarswellOnt 7252 (S.C.J.).
- **Chapter 4—Dispute Between Corporations and Their Shareholders—Planning Considerations—Rectification—Sale of Assets—Arrangement for Tax-Free Capital Dividends—Non-Taxable Portion of Sale Proceeds Not Transferred to Capital Dividend Account—Tax Conse-**

quences Resulting—Rectification Not Granted—Seeking Impermissible Form of Retroactive Tax Planning—

Where the taxpayer sold the assets of his corporation using an arrangement intended to result in tax free capital dividends paid to the taxpayer's holding company and then to him, but mistakenly the non-taxable portion of the sale proceeds had not been transferred to the capital dividend account prior to paying the dividends resulting in tax consequences, the application to rectify the director's resolutions and related dividends was denied: *Feeney v. Canada (Attorney General)*, 2024 CarswellOnt 20986, 2024 ONSC 6712, [2025] 4 C.T.C. 137, 174 O.R. (3d) 387 (S.C.J.).

- **Chapter 4—Dispute Between Corporations and Their Shareholders—Planning Considerations—Rectification—Corporate Reorganization—Dividends Between Related Companies—During Reorganization Some Companies Ceasing to be Related—Unexpected Tax Consequences—Rectification Not Granted—Seeking Substantial Retroactive Corporate Reorganization—Erroneous Advice of Tax Advisors—**When the corporate shareholders of a company drafted documents as part of a corporate reorganization to allow for the use the capital gains deduction (CGD). where dividends were paid between related corporations, but there was a discrepancy between their common intention, and the transactions, resulting in the dividends being fully taxable, the shareholders' application for rectification was not granted. as the shareholders were seeking a substantial retroactive corporate reorganization to correct the unexpected tax consequences of the restructuring to which they had voluntarily agreed, based on the erroneous advice of their tax advisors: *Agence du revenu du Québec c. Structures GB ltée*, 2025 CarswellQue 532, 2025 QCCA 134, EYB 2025-563032, reversing *Structures GB ltée c. Procureur général du Canada*, 2023 QCCS 3510, 2023 CarswellQue 12976, EYB 2023-531832.
- **Chapter 4—Dispute Between Corporations and Their Shareholders—Planning Considerations—Section 160 of *Income Tax Act*—Company Having Tax Debt—Dividend Paid to Sole Shareholder and Director—Director Liable for Tax Debt—Lack of Consideration—Dividend Linked to Ownership of Shares—Dividend Not Linked to Any Consideration for Services Rendered—**Where the taxpayer, who was the sole shareholder and director of a company received dividends while the company was a tax debtor, and alleged that the dividends were paid in exchange for services rendered to the company, the taxpayer's appeal from the Minister's assessment under s. 160 of the *Income Tax Act* was denied as a dividend was linked to the ownership of shares, and not to any consideration that the shareholder

might have provided: *Turcotte c. Le Roi*, 2025 CCI 98, 2025 CarswellNat 2898, 2025 D.T.C. 1068 (T.C.C. [General Procedure]).

- **Chapter 7—Issues in Separation and Divorce—Spousal Support—Income Inclusions and Deductions—Taxpayer Paying Spousal Support Pursuant to Separation Agreement—Subsequent Court Order Providing for Support Payments—Consent Order Not Specifying Whether Spousal Support—Support Payment Considered Child Support and Not Deductible**—Unless the written agreement or court order under which support payments were receivable identified an amount of support as being solely for the support of the recipient who was a spouse or former spouse, each support payment made under the written agreement or court order by the parent of a child was considered a child support payment and was, therefore, not deductible by the payer and not taxable to the recipient under the *Income Tax Act*: *In Vohra v. The King*, 2025 CarswellNat 2796, 2025 TCC 93, 2025 D.T.C. 1062 ([Informal Procedure]).
- **Chapter 9—Deductibility of Litigation Expenses—Regulatory Litigation—Overpayment Under *Ontario Works Act*—Whether Legal Fees Deductible From Overpayment**—In the context of a claim for an overpayment made under the *Ontario Works Act*, 1997, SO 1997, c 25, Sch A (OWA), the Social Benefits Tribunal considered whether legal fees paid to a lawyer to gain status in Canada was a valid expense deduction when calculating income or overpayment: *2412-07486 (Re)*, 2025 ONSBT 1624 (Ont. S.B.T.).
- **Chapter 9—Deductibility of Litigation Expenses—Criminal Defence Expenses**—An overview of *Income Tax Act* offences in relation to whether the income was legal or illegal was presented in *R. v. Pavlovich*, 2025 CarswellOnt 8533, 2025 ONSC 3024, [2025] 6 C.T.C. 70 (S.C.J.).
- **Chapter 10—Goods and Services Tax—Exempt Supplies—Rental of Residential Units in Rental Property—Input Tax Credits Denied—Residential Units Being Exempt Supply—Lack of Documentation Relating to Commercial Unit**—Where the registrant owned a rental property consisting of a commercial unit and two residential units, she was denied input tax credits for expenses incurred as the rental of the residential units was an exempt supply, the expenses were found to be personal, and there was a lack of documentation as required by subs. 169(4) of the *Excise Tax Act*: *Saha v. The King*, 2025 TCC 118, [2025] G.S.T.C. 32, 2025 CarswellNat 3446 ([Informal Procedure]).
- **Chapter 10 – Goods and Services Tax—Basics of GST—Rebate—GST/HST New Housing Rebate—Two Sons Each Purchasing Home in Local Subdivision—Parents**

Paying Deposits for Both Purchases—Sons Wanting to Have Own Homes—Rebates Allowed on Appeal—Sons Intending to Use Their Home as Principal Residence— Where the parents wanted their two sons to have their own homes, and each son entered into an APS to purchase a new home in a local subdivision with the parents paying the deposits, and mortgages being arranged, the sons' applications for the GST/HST new housing rebates were allowed on appeal as both sons intended to use their home as their primary place of residence: *Lisi v. The King*, 2025 CarswellNat 3138, 2025 TCC 106, 2025 D.T.C. 1086, [2025] G.S.T.C. 30 ([Informal Procedure]).

- **Chapter 10—Goods and Services Tax—Rebate—GST/HST New Housing Rebate—Applicant Purchasing Townhouse in Other City—Applicant Living With Family in Apartment in Toronto—Townhouse Sold After One Year—Rebate Denied—Lack of Proof That Moved into Townhouse—** Where applicant purchased a townhouse in another city that he sold one year later, while living with his family in a rented apartment in Toronto, he was denied a GST/HST new housing rebate as the court disbelieved that he moved his family to the property as their primary residence for one year, and then back to Toronto: *Bhalli v. The King*, 2025 CarswellNat 3389, 2025 TCC 117, [2025] G.S.T.C. 31 ([Informal Procedure]).
- **Chapter 11—Directors' Liability—Company Failing to Remit Source Deductions—Director Resigning—Director Not Directing Mind to Prevent Such Failure—Director Assessed Within Two Years of Written Resignation—** Where the taxpayer was an investor and director of a company that ran into financial difficulties and failed to remit the source deductions, he was liable as director under the *Income Tax Act* for the company's debt when he was assessed within two years of his written resignation, and when he did not turn his mind to preventing such failure: *Astle v. The King*, 2025 CarswellNat 3088, 2025 TCC 105, 2025 D.T.C. 1071 ([Informal Procedure]).