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Publisher's Note

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Tax Aspects of Litigation

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); and Chapter 10 (Goods and Services Tax/Harmonized Sales Tax (GST/HST)).

Highlights

This release includes the following case law:

- **Chapter 2 — Tax Treatment of Damages — Damages Received or Receivable — Employment Relationship — Discretionary Arrangement — Remuneration Purely Discretionary — Worker Not in Insurable Employment** — Where the worker's employment arrangement was discretionary, such that it was reasonable to conclude that her brother's company would not have entered into a substantially similar contract with her if they had been dealing at arm's length, the worker was not engaged in insurable employment:

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Positano v. M.N.R., 2024 TCC 117, 2024 CarswellNat 3505 (Employment Insurance),

- **Chapter 2 — Tax Treatment of Damages — Damages Received or Receivable — Hospital Employee — Refusing to Comply With COVID-19 Vaccination Policy — Constituting Misconduct — Disentitlement to EI Benefits** — Where the hospital employee wilfully failed to comply with Ontario's COVID-19 vaccination requirements at his workplace, this constituted misconduct within the meaning s. 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23, and the employee was not entitled to receive employment insurance benefits: *Cecchetto v. Canada (Attorney General)*, 2024 FCA 102, 2024 CarswellNat 1992, affirming 2023 CF 102, 2023 FC 102, 2023 CarswellNat 7370, 2023 CarswellNat 123, 2023 C.L.L.C. 240-004.
- **Chapter 4 — Disputes Between Corporations and Their Shareholders — Planning Considerations — Determining Income for Child Support Purposes — Lifting of Corporate Veil of Father's Company — Determining Pretax Corporate Income** — In determining all income available for child support purposes, the court was permitted to lift the corporate veil of a spouse's company when the income shown did not fairly reflect all income available for child support purposes. In the context of the *Provincial Child Support Guidelines*, N.S. Reg. 83/2017, the law was set out in *Ward v. Murphy*, 2023 NSSC 370, 2023 CarswellNS 986, [2023] N.S.J. No. 466 at paras. 17, 18, additional reasons 2024 NSSC 117, 2024 CarswellNS 332.
- **Chapter 7 — Issues in Separation and Divorce — Child Support — Provincial Child Support Guidelines — Father's Company — Determining Pretax Corporate Income (PTCI) — Adjusting PTCI for Wages Paid to Father** — Although the court was entitled to lift the corporate veil of the father's company to determine the pretax corporate income (PTCI), the application judge erred in her failure to sufficiently turn her mind to what was the available PTCI, and how much of that income to attribute to the father for the purpose of determining child support: *Ward v. Murphy*, 2022 NSCA 20, 2022 CarswellNS 171, 72 R.F.L. (8th) 255, reversing in part *P.W. v. C.M.*, 2021 NSSC 127, 2021 CarswellNS 243,
- **Chapter 10 Goods and Services Tax — How Does GST Work — Assessment Beyond Normal Period — Taxpayer Companies Defrauded by Officers** — Where the taxpayer companies alleged fraud by their officers resulting in alleged overpayment of income tax

and GST, their motions to extend the time for bringing applications for judicial review challenging the assessments beyond the normal assessment period was granted based on the best interests of justice: *KM Strike Management Inc. v. Canada (Attorney General)*, 2024 CF 947, 2024 FC 947, 2024 CarswellNat 2381, 2024 CarswellNat 2935, (*sub nom.* KM Strike Management Inc. et al. v. AG of Canada) 2024 D.T.C. 5100,

- **Chapter 10 Goods and Services Tax — How Does GST Work — Assessment Beyond Normal Period — Registrant’s Principal Suppressing Cash Sales of Restaurant — Misrepresentations Justifying Reassessment Beyond Normal Reassessment Period** — Where the taxpayer company operated a restaurant and utilized software to suppress the cash sales in its “point of sale” system, , the principal was found to have wilfully made misrepresentations in understating her income and in failing to remit the proper GST/HST so as to allow the Minister to reassess beyond the normal reassessment period: *Qi v. The King*, 2024 TCC 86, 2024 CarswellNat 2313, (*sub nom.* Coco Qi et al. v. The King) 2024 D.T.C. 1068, [2024] G.S.T.C. 30 (Informal Procedure),
- **Chapter 10 — Goods and Services Tax — Basics of GST — Input Tax Credits — Zero-rated Supplies — Bank’s Credit Cards — Bank Earning Foreign Interchange Fees — Granting of Credit Being Zero-Rated Supply** — Input tax credits (ITCs) were allowed for the GST paid by the registrant bank on expenses incurred to earn interchange fees from non-resident merchants for its credit card authorization and payment service as the service was characterized as the granting of credit, which was a zero-rated supply. On the other hand, the registrant was not entitled to claim ITCs on the expenses incurred in the redemption of loyalty reward points that might have accrued to customers involved in the transactions with the non-resident merchants, as no commercial activity was present: *Royal Bank of Canada v. The King*, 2024 TCC 125, 2024 CarswellNat 3808 (General Procedure)
- **Chapter 10 — Goods and Services Tax — Basics of GST — Bank’s Redemption of Loyalty Points — “Commercial Activity” — Notional Input Tax Credits** — Where the taxpayer, PC Bank, claimed notional input tax credits for payments it made to Loblaws when clients redeemed loyalty points at the supermarket stores, the appellate court determined that the PC Bank made the redemption payment in the course of a “commercial activity” of the PC Bank pursuant to subs. 181(5) of the ETA: *President’s Choice*

Bank v. Canada, 2024 CAF 135, 2024 FCA 135, 2024 CarswellNat 3190, 2024 CarswellNat 3171, [2024] G.S.T.C. 38, reversing *President's Choice Bank v. The Queen*, 2022 TCC 84, 2022 CarswellNat 2711, 2022 D.T.C. 1062, [2022] G.S.T.C. 50 (General Procedure)

- **Chapter 10 — Goods and Services Tax — Basics of GST — Exempt Supplies — Residential Property Exemption — Demolishing Existing Building and Rebuilding New Home — Occupying as Residence — Sale Exempt From GST/HST —** Where siblings purchased a property and demolished the existing building, and built a new home, and occupied the home as their residence, the sale of the property was exempt from GST/HST, even if the court determined them to be a “builder”: *Nicosia v. The King*, 2024 TCC 112, 2024 CarswellNat 3383 (General Procedure)
- **Chapter 10 — Goods and Services Tax — Basics of GST — Rebates — GST/HST New Residential Rental Unit Rebate — Condo Unit — Interim Occupancy — Rental to Tenant — Reasonable Expectation That Rental for More Than One Year — Determination Made When Owner Having Right to Occupy —** In order to qualify for a new residential rental unit rebate, the definition of “qualifying residential unit” was satisfied if the owner of a condo unit held a reasonable expectation that the first tenant would rent the unit for greater than a one-year period, and this could only be determined before and during the time that the actual first use occurred, when the owner had the right to occupy the unit under the concept of interim occupancy: *12329905 Canada Ltd. v. The King*, 2024 TCC 115, 2024 CarswellNat 3506 (Informal Procedure),