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McMechan & Bourgard Tax Court Practice

Release 2024-4

Highlights

Chapters 1, 3, 4, 5, 7, 8, 11, and Appendix D have been updated. The following are some notable highlights.

Volume 1

- **Chapter 1, The Tax Court of Canada**, the following information has been updated: **Registry — Regional Offices** (Hamilton location).

- **Chapter 3, Tax Court of Canada Act**, the following provisions have been updated: **Introductory paragraph** (Cross-references updated); **s. 12 Jurisdiction and Powers of the**

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Court (*Global Minimum Tax Act*); **s. 12 Statutory Court with Limited Jurisdiction** (*Iris Technologies v. Canada (Attorney General)*); **s. 12 Implied Jurisdiction** (*Dow Chemical Canada ULC v. Canada*; *Lux Operating Limited Partnership v. The King*); **s. 12 Power to Decide Collateral Matters — Common Law, Civil Law, and Equity** (*Fiducie Historia c. Le Roi*); **s. 12 Power to Enforce Settlement Agreements** (*Mandic Estate v. The King*); **s. 13 Transfer Pricing Adjustment Request** (*Dow Chemical Canada ULC v. Canada*); **s. 13 Contempt of Court** (*Canadian Pacific Railway Company v. Teamsters Canada Rail Conference*); **s. 16.1 In Camera Proceedings** (*Société Radio-Canada c. Personne désignée*); **s. 17.1 Right to Appear — Officers of the Court** (Section updated); **para. 18.29(3)(a) Other Applications** (new subparagraph added); **s. 18.29 Other Applications — Inconsistent Provisions** (*Davitt v. The Queen*); **subsec. 18.31(2) General Procedure — Determination of a Question** (Subsection updated); **subsec. 18.32(2) Idem — Provisions Applicable to Determination of a Question** (Subsection updated).

• **Chapter 4, General Procedure Rules**, the following provisions have been updated: **s. 8 Attacking Irregularity and Fresh Steps** (*Lark Investments Inc. v. The King*); **s. 16.1 Confidentiality Order** (*Future Electronics Inc. v. The King*); **s. 29 Transfer or Transmission of Interest** (*Mandic Estate v. The King*); **subsec. 30(1) “Act in Person” — Self-Represented Litigants** (*Davis v. Canada (Royal Canadian Mounted Police)*); **s. 31 Removal of Counsel from Record on Application by Opposing Party** (*Dye & Durham Limited v. Ingarra*); **para. 49(1)(e) Other Material Fact: Pleading Gross Negligence Penalties** (*Encore Cellular Inc. v. The King*); **para. 53(3)(a) Abuse of Power/Abuse of Process/Conduct of Minister** (*Dow Chemical Canada ULC v. Canada*; *Hud v. Canada*); **para. 53(3)(a) Accounting for Payments/Source Deductions/Withholdings** (*Gillies v. The King*); **para. 53(3)(a) Amended Return** (*Adams v. The King*); **para. 53(3)(a) Lesser Penalties** (*Sussex Group - Allan Sutton Realty Corp. v. The King*); **s. 54 Rule 54 Amendments — Generally** (*Lux Operating Limited Partnership v. The King*; *TPINE Leasing Capital Corporation, v. The King*); **s. 58 Determination of Questions** (*Dow Chemical Canada ULC v. Canada*); **subsec. 67(6) Proof of Service** (*Cole v. The King*); **s. 69 Written Representations** (*Pilarski v. Canada*; *Cole v. The King*); **s. 71 Affidavit of Counsel** (Note updated); **s. 82 Confidentiality — S. 241 ITA/S. 295 ETA** (*Robillard v. The King*); **s. 82 Confidentiality — Informer Privilege** (*Société Radio-Canada c. Personne désignée*); **s. 82 Confidentiality — Litigation Privilege** (*SPE Valeur Assurable Inc. c. Le Roi*); **subsec. 95(1) Questions Asking for or About Documents** (*Hartman v. The King*); **subsec. 135(2) Burden of Proof in an Appeal from an Assessment** (*Dirani v. Canada*; *Hud v. Canada*); **subsec. 135(2) Burden of Proof in an Appeal from an Assessment — Demolishing Assumptions with a *Prima Facie* Case** (*1048547 Ontario Inc. c. Le Roi*; *Paquet v. The King*); **s. 135 Burden — Director’s Liability and s. 160, s. 323 ETA Non-Arm’s Length Transfer Assessments** (*Vasilkioti v. The King*); **s. 135 Burden — Net Worth or Other Alternative Audit Methods** (*Paquet v. The King*; *Qi v. The King*); **s. 146.1 Lead Cases** (*Urbanowski Estate v. The King*); **s. 147 Rule 147** (Note and cross-references updated); **subsec. 147(1) The Tax Court’s Principled Approach to**

Costs (*Marine Atlantic Inc. v. The King*); **subsec. 147(1) Other Cost Principles** (*Husky Energy v. The King*); **subsec. 147(3) Costs — Factors Considered** (*Husky Energy v. The King*); **para. 147(3)(a) The Result of the Proceeding** (*Husky Energy v. The King*; *Marine Atlantic Inc. v. The King*; *Madison Pacific Properties Inc. v. The King*); **para. 147(3)(b) Amounts in Issue** (*Marine Atlantic Inc. v. The King*; *Madison Pacific Properties Inc. v. The King*; *Prospera Credit Union v. The King*); **para. 147(3)(c) Importance of the Issues** (*Husky Energy Inc. v. The King*; *Prospera Credit Union v. The King*); **para. 147(3)(d) Written Settlement Offers** (*French v. The Royal Canadian Legion (Dominion Command)*); **para. 147(3)(e) Volume of Work** (*Madison Pacific Properties Inc. v. The King*; *Husky Energy Inc. v. The King*); **para. 147(3)(f) Complexity of Issues** (*Madison Pacific Properties Inc. v. The King*; *Husky Energy Inc. v. The King*); **para. 147(3)(g) Conduct of a Party** (*Emergis Inc. v. The King*; *Marine Atlantic Inc. v. The King*); **para. 147(3)(h) Refusal to Admit** (*Madison Pacific Properties Inc. v. The King*); **para. 147(3)(i) Improper or Negligent Step** (*Husky Energy Inc. v. The King*); **para. 147(3)(i.1) Expert Fees Justified** (*Husky Energy Inc. v. The King*); **para. 147(3)(j) Any Other Matter Relevant to Costs** (*Husky Energy Inc. v. The King*); **subsec. 147(4) Fixed and Lump Sum Costs** (*Husky Energy Inc. v. The King*; *Madison Pacific Properties Inc. v. The King*; *Emergis Inc. v. The King*); **s. 160 Rule 160 — Security for Costs** (*Lux Operating Limited Partnership v. The King*); **subsec. 167(1) Rendering Judgment/ Issuing Order** (*Rafique. v. Canada (National Revenue)*).

- Chapters 5-11 have been significantly reviewed and refreshed. Below are some notable highlights.

- **Chapter 5, Informal Procedure Rules for *Income Tax Act* and *Petroleum and Gas Revenue Tax Act* Appeals**, the following provisions have been updated: **s. 4.2 Filing Date** (*Popovich v. The King*); **subsec. 6(2) Reply to Notice of Appeal** (*Auddino v. The King*).

- **Chapter 7, *Canada Pension Plan Appeals***, the following provision has been updated: **s. 6 Extension of Time** (*Covic v. Minister of National Revenue*).

- **Chapter 8, *Employment Insurance Act Appeals***, the following provisions have been updated: **s. 103 Jurisdiction of the Tax Court on an *EI Act* Appeal** (*Davitt v. Minister of National Revenue*); **s. 103 Nature of a Contract of Service Appeal under para. 5(1)(a) *EI Act*** (*Ubartas c. M.R.N.*).

- **Chapter 11, Miscellaneous Statutes**, the following section has been updated: ***Old Age Security Act Appeals*** (*Gerstel v. Canada (Minister of Human Resources Development)*); New sections added (***Global Minimum Tax Act***; ***Digital Services Tax Act***; and ***Canada Disability Benefit Act***).

Volume 2

- **Appendix D, Practice Notes, Directions & Notices**, the following information has been updated: **Practice Note No. 22 (amended)** Expert Panels. The following new information has been added: **Notices to the Public and the Profession** — *The Tax Court of Canada ceases operations at its Hamilton location; Retroactive Rescission of November 2023 Practice Direction and Order Regarding the Extension of Time to File a Reply to a Notice of Appeal*; **Practice Direction and Order** — *November 2023 Order regarding section 44 of the Tax Court of Canada Rules, General Procedure is rescinded with retroactive effect.*
- over 46 new case annotations; and
- Table of Cases and Index have been updated to reflect the current Release.