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GAAR Interpreted:

The General Anti-Avoidance Rule

Release 2024-1

Highlights

Chapter 1 — The Development of the General Anti-Avoidance Rule

New section 1.9 has been added. Section 1.9 discusses the 2024 GAAR amendments enacted on June 20th, 2024. Legislative background of the amendments, the preamble, avoidance transactions, economic substance rule, penalties, assessment and reassessment, extended assessment period, and reportable transactions are discussed.

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Chapter 5 — Judicial Interpretation Case Law

The following cases have been added:

- *Canada v. Microbjo Properties Inc.* where appeal was partially allowed by the Federal Court of Appeal, finding that the respondents were liable for outstanding tax debt under subsection 160(1) of the *Income Tax Act* but that the GAAR did not apply.
- *DAC Investments Holding Inc. v. His Majesty the King* appellant was found to not have abused the provisions of the *Income Tax Act* when it continued in a foreign jurisdiction while remaining a resident of Canada. The GAAR was found not to apply, and the appeal was allowed with costs.
- *DEML Investments Limited v. The King* where the Tax Court of Canada applied the GAAR to deny a capital loss and carry-back claimed by DEML Investments Limited.
- *Husky Energy Inc. v. The King* where the Tax Court of Canada held that the beneficial owner of a dividend who is not the legal recipient is not entitled to treaty benefits.
- *Madison Pacific Properties Inc. v. The King* where the Tax Court of Canada applied the GAAR to deny the use of net capital losses from a mining business to offset capital gains from a new real estate business.
- *Polarsat Inc. v. His Majesty the King* question of whether leave should be granted to Minister, pursuant to section 54 of the *Tax Court of Canada Rules*. The appeal was dismissed with costs.

The following cases have had further developments:

- *3295940 Canada Inc. v. Her Majesty the Queen* was reversed by the Federal Court of Appeal. The reassessment was referred back to the Minister for a reassessment, excluding the additional capital gain.
- *MMV Capital Partners Inc. v. The Queen* was reversed by the Federal Court of Appeal, finding that there was misuse and abuse of subsection 111(5) of the *Income Tax Act*. The appeal was dismissed with costs.

Chapter 8 — GAAR Legislation

- Federal *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) s. 245 has been updated to include GAAR amendments enacted on June 20, 2024.