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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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What's New in this Update

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 5 (Disputes Between Members of a Partnership); Chapter 6 (The Consequences of Bankruptcy and Insolvency); 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—Whether EI Benefits Reduced by Amount of Workers' Compensation—**Although the employment insurance benefits could be reduced to zero if the claimant received compensation for a work-related accident or occupational disease that exceeded the amount of the benefits, this was subject to the exception where the compensation was received under "a plan established under a provincial law": *Canada (Procureur général) c. Joseph*, 2026 CAF 77, 2026 CarswellNat 1203 (F.C.A.).
- **Chapter 2—Tax Treatment of Damages—Damages for Wrongful Dismissal—Employment Insurance—Employment Status—Worker Cooperative—Worker as Member of Cooperative—Volunteer Status Changing to Employment Status—**Where the claimant was the founding member of a worker cooperative, and initially undertook work as a volunteer in establishing the cooperative before becoming a salaried employee under a formal contract, the claimant was in an employment relationship as the tasks performed after his hiring was for a viable position with the cooperative. In *Harvey c. M.R.N.*, 2026 CCI 106, 2026 CarswellNat 1944 ([Employment Insurance]).
- **Chapter 2—Tax Treatment of Damages—Damages for Wrongful Dismissal—Employment Insurance—Independent Contractor—Mutual Understanding—Working Engagement Consistent With Understanding—Worker Not Engaged in Insurable Employment—**Where there was a mutual understanding from outset that worker was engaged as an independent contractor and, throughout the working engagement, all parties conducted themselves in manner consistent with that understanding, the worker was found not to be engaged in pensionable or insurable employment: *Varga v. M.R.N.*, 2026 TCC 138, 2026 CarswellNat 2767 ([Employment Insurance]).

- **Chapter 4—Disputes Between Corporations and Shareholders—Director Liable Under ETA for Unremitted GST/HST—Director Transferring Property to Spouse and Daughter Without Consideration—Spouse and Daughter Appealing Assessment Under ETA—Director Settling Personal Income Tax Liability—Spouse and Daughter Mistakenly Discontinuing Appeal—Settlement Not Eliminating Director's Liability Under ETA—Discontinuance Deeming Appeal Dismissed—**Although the taxpayers' appeal of GST/HST liability under s. 325 of the ETA was discontinued on the mistaken belief that the settlement of the transferor's personal tax liability eliminated their liability, the discontinuance deemed the appeal proceedings to be dismissed, and the assessment to be valid and binding: *Yi v. The King*, 2026 TCC 82, 2026 CarswellNat 1521, 2026 D.T.C. 1059, [2026] G.S.T.C. 25 ([General Procedure]).
- **Chapter 5—Disputes Between Members of Partnership—Two Brothers Operating Business—Following Dispute, Defendant Brother Excluding Plaintiff Brother From Business—Defendant Brother Continuing Business Through His Company—Plaintiff Brother Awarded Half of After-Tax Profits—Trial Judge Erring in Not Fully Deducting Taxes Paid by Defendant Brother's Company—**Where two brother entered into a partnership to jointly operate a milk delivery business through a corporation, but following a dispute, the plaintiff brother was excluded from the business, and the defendant brother operated the business through another company, and the plaintiff was awarded 50 per cent of the net after-tax profits, the trial judge erred in not fully deducting the income taxes paid by the defendant brother 's company. In *Alyousef v. Alyousef*, 2026 ONCA 374, 2026 CarswellOnt 8390, in additional reasons to 2026 ONCA 78, 2026 CarswellOnt 1562, additional reasons at 2026 ONCA 280, 2026 CarswellOnt 6687.
- **Chapter 6—Bankruptcy and Insolvency—Receivership—Supplier and Recipient Having Contractual Right of Set-Off—Goods Supplied and HST Owing—Supplier Granted Protection Under CCAA—Set-Off Clause Not Applying as HST Being Debt Owed to CRA—Recipient to Pay HST to Receiver—**Where the parties to a supply contract were entitled to exercise a contractual right of set-off of amounts payable by the recipient to the supplier, and the supplier was granted protection under the CCAA at a time when the recipient had not yet paid the HST, the set-off clause did not apply to a debt owed to the CRA, and the recipient was required to pay the unpaid HST to the receiver: *Glencore Canada Corporation v. FTI Consulting Canada Inc.*, 2026 BCCA 167, 2026 CarswellBC 1209, [2026] G.S.T.C. 19,

varying *Trevali Mining Corporation (Re)*, 2024 BCSC 2252, 2024 CarswellBC 3698, 17 C.B.R. (7th) 324, [2024] G.S.T.C. 59.

- **Chapter 10—Goods and Services Tax—Input Tax Credits (ITCs)—Disorganized Record-Keeping—Registrant's ITCs Substantially Reduced—Penalties Not Imposed—Inaccuracies Due to Negligent Practices—**Although the registrant's disorganized record keeping and bookkeeping did not result in the sham doctrine applying, the court had no confidence in the accuracy of the ITCs claimed for payments made to subcontractors, and the ITCs were substantially reduced, but penalties were not imposed as the inaccuracies were due to negligent practices: *Zhen Zhen Fashion Company Ltd. v. The King*, 2026 TCC 124, 2026 CarswellNat 2460, [2026] G.S.T.C. 36 ([Informal Procedure]).
- **Chapter 10—Goods and Services Tax—Input Tax Credits (ITCs)—ITCs Not Initially Claimed Due to Uncertainty—HST Status Subsequently Confirmed—Registrant Claiming ITCs—ITCs Denied as Beyond Limitation Period—Section 296 of ETA Overriding Limitation Period—**Where the registrant did not claim ITCs in its 2012 reporting periods due to uncertainty regarding its HST status, but in 2018, its eligibility was confirmed, the matter was referred to the Minister for a reassessment despite the expiry of the limitation period in s. 225 of the ETA due to s. 296 of the ETA overriding the limitation periods as the ITCs would have been allowed but for the limitation period: *Ontario Tire Stewardship v. The King*, 2026 TCC 77, 2026 CarswellNat 2334, 2026 D.T.C. 1088, [2026] G.S.T.C. 33 ([General Procedure]).
- **Chapter 10—Goods and Services Tax—Exempt Supplies—Appellant Residing in Condo Unit—Appellant Purchasing Two Properties—Demolishing Two Smaller Dwellings and Building Two Larger Dwellings— Appellant Assessed HST as Projects Adventure in Nature of Trade (ANT)—**Where the appellant, while residing with his family in a condo unit, purchased two properties, demolished the existing one-storey dwelling, and built and immediately sold the two-storey dwelling constructed on each, he was assessed HST as each project was consistent with an adventure in the nature of a trade (ANT): *Salehi v. The King*, 2026 TCC 139, 2026 CarswellNat 2829 ([General Procedure]).
- **Chapter 10—Goods and Services Tax—Exempt Supplies—"Builder"—Self-Supply Rules—Exemption Not Applying—Owner Dividing Property Into Two Lots—Building Home on Each Lot—Owner Claiming One Home for Mother—Change in Plans and Selling Home—Owner Assessed as "Builder" and Required to Collect GST/HST—Owner Unable to Claim ITCs as Non-**

Registrant Status—Where the owner divided his property into two lots and built a two-storey home on each lot, and sold one home in 2019, and initially claimed the home was for his mother, but calculated the GST/HST collectible based on the sale price and deducted ITCs, paying the net amount to the CRA, he was reassessed as he was a "builder", and was required to remit the GST/HST, but the owner's non-registrant status, at that time of the sale, meant that he — unlike a person who made a taxable supply in the course of a business — was not entitled to claim ITCs: *Fadali v. The King*, 2026 TCC 86, 2026 CarswellNat 1616, 2026 D.T.C. 1061, [2026] G.S.T.C. 26 ([General Procedure]).

- **Chapter 10—Goods and Services Tax—Rebate—GST/HST New Housing Rebate—Applicant Purchasing Unit After Suffering Heart Attack—Applicant Selling Unit After Recovering—Applicant Meeting Intention and Time of Occupancy Requirements for Rebate—**Where the taxpayer entered into a pre-construction contract for a condominium unit, the taxpayer came within the definition of a "builder" in s. 123(1) of *Excise Tax Act* (ETA), which included a person who acquired an interest in a residential condo unit before the complex had been registered as condominium or had been occupied as a residence. At the same time, the taxpayer would not meet conditions for an exception under s. 191(5)(b) of the ETA as neither she nor her daughters used the condo primarily as a place of residence. In *Qureshi v. The King*, 2026 TCC 87, 2026 CarswellNat 1621, [2026] 5 C.T.C. 2010, 2026 D.T.C. 1063, [2026] G.S.T.C. 27 ([General Procedure]).
- **Chapter 10—Goods and Services Tax—Exempt Supply—"Builder"—Self-Supply Rules—Exemption Not Applying—Husband and Wife Building Luxury Home—Selling Home for Profit Without Occupying Home—Venture in Nature of Trade—GST Assessed on Purchase Price—**Where the husband and wife purchased a vacant lot, built a luxury home and sold it in a venture of trade for profit without having occupied the property, they were assessed GST on the purchase price as each was a "builder" within the meaning of s. 123 of the ETA: *Braich v. The King*, 2026 TCC 117, 2026 CarswellNat 2332, 2026 D.T.C. 1090, [2026] G.S.T.C. 32 ([Informal Procedure]).
- **Chapter 10—Goods and Services Tax—Rebate—GST/HST Housing Rebate—Taxpayer Purchasing Two Condo Units—Wife Purchasing Further Unit—Uncertainty Concerning Which Unit Being Place of Residence—Couple Returning to Home Country—Rebate Denied—**Where the taxpayer purchased two residential condominium units, with one downtown unit, and one unit near a canal, the taxpayer was not entitled to the GST/HST New Housing

Rebate, as his wife also purchased a downtown unit, and it was not clear which unit would be their place of residence, while shortly after the purchase of the canal unit, the taxpayer and his wife returned to China without occupying either unit: *Xian v. The King*, 2026 CCI 122, 2026 TCC 122, 2026 CarswellNat 2744, 2026 CarswellNat 2395, 2026 D.T.C. 1094, [2026] G.S.T.C. 34 ([Informal Procedure]).

- **Chapter 11—Directors' Liability—Context of Securities Legislation—Corporate Profile Report Noting Individual as Director—Individual Establishing That Not Consenting to Act as Director—Individual's Evidence Not Displaced—Contravention of Statute Not Proven—** Where the respondent was subject to an order of the Ontario Capital Markets Tribunal banning him from becoming or acting as a director or officer of any issuer, and the corporate profile report indicated that he was a director and officer of an OBCA corporation, an issuer, the alleged contravention was dismissed where the respondent established that he did not consent to be a director and officer of that issuer, and the Commission did not displace or discredit the respondent's evidence: *Ontario Securities Commission v. Ward*, 2026 ONCMT 23, 2026 CarswellOnt 8409, 49 O.S.C.B. 4839.