TAX FOR THE Owner-Manager

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Deductible Expenses: A Porous Paragraph 18(1)(a)

In *BJ Services Company Canada* (TCC 2003), the Tax Court considered whether outlays made by a predecessor corporation (Corpco) of the appellant in response to a hostile takeover bid were deductible in computing business income. The expenses consisted of fees for financial advice, the fee for a "white knight" corporation's agreement to present an alternative competitive takeover proposal, and the fee paid to the white knight because an unsolicited third-party bid was made and accepted by the target's shareholders.

The court's analysis focused primarily on paragraph 18(1)(a) of the Income Tax Act. Campbell J concluded that the criteria for deductibility under the paragraph had been broadened by the removal of the words "wholly, exclusively and necessarily" from the earlier version of the paragraph. In her view, the current wording supported the deductibility not only of direct expenses relating to a company's product or services, but also of ancillary expenses necessary for the conduct of the company's operations. She put the expenses of maintaining good shareholder relations in this latter category.

Relying on the decision in *Symes* (SCC 1994), Campbell J stated that if an expense is a business expense and not one of a personal nature, the test for deductibility may be met by showing that the expense satisfied a need of the company. Further, those expenses of a business that are ancillary to its primary functions and activities may also be deductible. A direct link between expenses and revenue is not required for deductibility. Consequently, the restriction in paragraph 18(1)(a) was porous and the deductibility of the expenses was not denied, as long as they were of a business nature and not personal.

The court concluded that the expenses, though ancillary, satisfied a need of Corpco and were required by the practicalities of the takeover bid environment. In the court's view, the costs that a taxpayer must incur to comply with its obligations in respect of certain legal and public financial market expectations during a takeover bid should be deductible. The expenses were simply costs of doing business in such a marketplace. They were commercial in nature and part of the business activities of Corpco; as such, they were incurred for the purpose of gaining or producing income.

The Crown argued that the expenses were incurred in the course of maximizing the share price on a potential disposition and did not meet the test of having been incurred for the purpose of gaining or producing income. The court rejected this argument, following the approach in *International Colin Energy Corporation* (TCC 2002). In the court's view, the maximization of the share price was inextricably interwoven with the business of any company, public or otherwise. Although the expenses related to maximizing share value, shareholder funding was essential for Corpco's success and survival. The court held that paragraph 18(1)(b) did not prohibit the deduction of the expenses. No capital asset was acquired or preserved, and Corpco obtained no enduring benefit by incurring the expenses. Further, the expenses did not relate to any prior or subsequent period. The court also held that the expenses were deductible under paragraph 20(1)(e); it did not deal with the appellant's alternative arguments relating to investment counsel fees and eligible capital expenditures.

Although this case dealt with the deduction of takeover costs, its importance goes beyond its particular facts. The decision reflects a growing willingness on the part of the courts to broaden the category of deductible business expenses. Increasingly, any expense incurred in the course of a business, however ancillary to the income-earning process, will be deductible, provided that it is not personal in nature or on account of capital.

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In This Issue

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Tax Shelter Investors: More Bad News

Just when it seemed that the law might be getting clearer, and that there might be some hope of resolving the backlog of outstanding tax shelter litigation, more bad news came in the March 23, 2004 federal budget.

Tax shelter litigation is tiresome, cumbersome, complex, and expensive. Typically, one test case is put forward from each group of tax shelter investments: the decision in that case then becomes a basis for the settlement of all other objections. However, the one aspect of the assessment that cannot be resolved by the judicial process is the calculation of interest.

Some of the oldest tax shelter cases have now finally worked their way through the appeal process to the Federal Court of Appeal. A number of cases beginning in the late 1980s, such as the early record deals and some of the earliest computer software deals, have now finally emerged from the judicial process, allowing the Department of Justice and the CRA to work out the terms of settlement with other affected taxpayers. In many cases, however, settlement talks are slow because the CRA refuses to discuss the question of a waiver of interest as part of the settlement; instead, it insists that the issue must be resolved through application to the fairness committees.

Now the kicker: in the March 23 budget, the government proposed to restrict the time period for fairness applications. For calendar years after 2004, the minister may not consider the waiver of penalties and interest in respect of taxation years that ended more than 10 years before the beginning of that calendar year (see budget resolutions 22 and 23). In many tax shelter cases and other tax litigation that commenced before 1994, the test cases may not have been heard, the appeal periods may not have expired, or the parties may not be able to reach a settlement before the end of 2003. In such cases, taxpayers may find that their ability to seek a waiver of penalties levied in the initial taxation year (before 1994), together with interest for periods before 1994, has been eliminated.

Is this a disguised attempt by the government to force taxpayers to settle old tax litigation? If so, it is unconscionable that one party to the litigation should be able to fundamentally change the rules to its benefit and the other party's detriment. These changes in the fairness provisions parallel the addition of a new 10-year limitation period for the collection of outstanding tax debts. That proposal is open to the criticism that it too arbitrarily affects established legal rights.

The proposed fairness changes do not exempt outstanding notices of objection related to periods prior to 1994. At a bare minimum, such grandfathering must be built into the legislation if we are to retain some sense of fairness in the system.

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Defence for Assessed Directors: The Corporation's Assessment Is Wrong

Directors who are assessed for a corporation's GST debt can raise a number of defences, one of which is that the corporation's assessment is wrong. A director who intends to raise this argument should be aware of the CRA's position and what the courts have had to say about the validity of this defence. The CRA is generally of the view that a director who is assessed should not be able to dispute the corporation's assessment because the corporation will have had its own opportunity to appeal the assessment. Not all Tax Court judges agree with this position; two recent decisions present the opposing views on this issue.

In *Wiens* (TCC 2003), two directors, husband and wife, who had operated a store were assessed approximately $25,000 for the corporation's GST debt. The directors disputed the corporation's assessment because they believed that they had done everything right; they had even retained the assistance of a former CRA auditor. Bowman J accepted that the directors were entitled to challenge the corporation's assessment even though the corporation had not initially objected to it. He cited *Gaucher* (FCA 2000) to support his proposition that "it is of course open to a taxpayer who has been assessed derivatively under section 323 of the ETA to challenge the underlying assessment against the corporation even if the corporation has failed to do so." Although the directors did not present adequate evidence to establish that the corporation's assessment was wrong, Bowman J accepted that the directors had done all that could reasonably have been expected of them during a period when the store had been robbed and subsequently padlocked by the landlord. He partially reduced the assessments accordingly.

By contrast, in *Maillé* (TCC 2003), Tardif J did not allow the director to challenge the corporation's assessment. The corporation was in the business of offering accounting, management, and tax-planning services. The director was assessed $23,180.45 for the corporation's GST liability. Tardif J distinguished *Gaucher* and refused to accept that the director could argue that the corporation was a small supplier and should have been deregistered. He focused on the fact that Maillé was a sole director and therefore had already had a chance to challenge the corporation's assessment at the time. The corporation had filed a notice of objection to its assessment, but it did not appeal its assessment to the Tax Court because it could not afford to do so. Tardif J confirmed the director's assessment, finding that the director had not exercised due diligence. His decision was probably influenced by the fact that the director offered tax and accounting services.

The opposing views of Bowman J and Tardif J stem from their contrary views on the application of the *Gaucher* case. *Gaucher* is an important decision because it came from a higher court, the Federal Court of Appeal. Although *Gaucher* did not involve directors' liability, it dealt with a derivative assessment (that is, a third party was assessed for someone else's tax liability) under section 160. The taxpayer was permitted to challenge the primary assessment, claiming that the primary assessment was made outside the limitation period. The Federal Court of Appeal said that "[i]t is a basic rule of natural justice" that "a person who is not a party to litigation cannot be bound by a judgment between other parties." Bowman J in *Wiens* extends this principle to directors' liability assessments, whereas Tardif J in *Maillé* does not.

The conflicting views expressed in *Wiens* and *Maillé* should not present an obstacle to directors who intend to argue that the corporation's assessment is wrong. The two cases are informal procedure decisions, which, unlike general procedure decisions, are not considered precedents. Moreover, there are other cases on this issue: in two general procedure decisions, *Lau* (TCC 2002) and *Elias* (TCC 2002), Bowman J applied *Gaucher* to permit the directors to challenge the corporation's assessments. Until the issue is resolved by a higher court, the current case law provides a reasonable basis to support a director's challenge of the corporation's assessment.

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Section 160 and Dividends

Section 160 of the Income Tax Act is used frequently by the CRA to collect income tax from persons who receive property from another taxpayer who is liable to pay tax. For section 160 to apply, a number of conditions must be satisfied.

First, the primary taxpayer must transfer the property at a time when tax is owed. The fact that the tax in question may be assessed at a later date is not relevant.

Second, the transferee must be one of

- the transferor's spouse or common law partner or a person who has since become one of these,
- a person who was under 18 years of age, or
- a non-arm's-length person.

Third, the fair market value (FMV) of the consideration given by the transferee must be less than the FMV of the property received on the transfer. This shortfall is generally the maximum amount for which the transferee can be liable. (An interesting question arises with respect to the amount of interest for which the transferee may be assessed: see the proposed amendment to subsection 160(1.2) in clause 92(5) of the February 27, 2004 Technical Bill.)

On a number of occasions, the courts have been asked to determine whether these conditions are met when a corporation pays a dividend to a minority shareholder who is not related to the corporation under the technical rules. In these cases, the issue is usually whether the corporation and the shareholder are not dealing at arm's length as a matter of fact.

If the dividend is paid in cash or in kind, there is a transfer of property: *Fournier* (TCC 1991). If a stock dividend is paid, there is no transfer of property because a corporation's shares are not its property: *Algoa Trust* (TCC 1993). (It is beyond the scope of this article to examine the implications, vis-à-vis section 160, of the issuance of a stock dividend followed by the redemption of the shares received. If, as seems likely, the payment of the redemption proceeds will be regarded as a transfer of property, does the shareholder give as consideration the value of the shares being redeemed? If it can be maintained that the shareholder does, then section 160 will have been circumvented.) The courts have also held that a shareholder does not give consideration for the payment of a dividend: see *Algoa Trust*. Therefore, section 160 can apply to a minority shareholder who has received a dividend and is not dealing at arm's length with the corporation. Whether it will apply depends on the facts and circumstances of each case.

In *Fournier*, a dividend was paid to Fournier, a 45 percent shareholder unrelated to the other shareholder of the corporation. He and the other shareholder were the directors. The court found that they had acted in concert and with a common economic interest in declaring dividends. Consequently, they were not at arm's length with the corporation, and they were properly assessed under section 160 for the corporation's tax. Two leading cases were cited: *Merritt* (Ex. Ct. 1969) and *Swiss Bank Corporation* (SCC 1972). In essence, these cases hold that if the same mind directs the bargaining for two parties, the parties are not at arm's length.

A minority shareholder who receives a dividend is not, however, *automatically* considered to deal with the corporation at non-arm's-length. In *Siracusa* (TCC 2003), a taxpayer who had inherited a minority interest was not consulted by the other two shareholders who actually directed the operations of the corporation. In fact, they considered her a nuisance and did not involve her in decision making. The corporation paid a dividend at a time when it owed tax. Although the resolution authorizing the dividend was signed by the taxpayer (who was a director), the court nevertheless held that she was at arm's length with the corporation because the other two shareholders controlled it. In essence, the court felt that merely fulfilling one's duties as a director by signing a resolution authorizing a dividend does not constitute acting in concert with the other directors if all of the other circumstances indicate otherwise. (See also *Gestion Yvan Drouin* [TCC 2000]).

It appears that it is not sufficient to find that the shareholders have a generalized common interest in having their corporation pay dividends: to be found liable under section 160, the shareholder must actively participate in the decision-making process leading to the declaration of the dividend.

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Associated Corporations: Taxing the Unconscious

Under subsection 256(2.1) of the Income Tax Act, two or more corporations are deemed to be associated if it may reasonably be considered that one of the main reasons for their separate existence is to reduce the taxes otherwise payable under the Act. *LJP Sales* (TCC 2003) addressed the meaning of the phrase "one of the main purposes" in the subsection. The case illustrates the practical difficulties associated with the application of a statutory test that turns on the state of mind of the taxpayer.

In *LJP Sales*, Mr. and Mrs. P had built up a successful locksmith business. Two companies were involved in the business. Jo-Van Distributors carried on the operations and was 91 percent owned by Mrs. P. VMP Properties provided the premises in which Jo-Van carried on business and was owned by Mr. P. Mrs. P ran the locksmith business; Mr. P assisted with sales. The locksmith side of the operations prospered. Mr. and Mrs. P experienced relationship difficulties, especially with respect to their two children. A divorce was discussed, and Mr. P considered disinheriting the children. Mrs. P did not wish to abandon them. There were discussions regarding the business and the fact that Mrs. P's equity was growing at a faster rate than Mr. P's.

On the advice of their accountant, they decided to reorganize the business. Mr. P incorporated LJP Sales Agency to take over the marketing and sales functions for Jo-Van for a fee of 5 percent of sales. It was thought that this arrangement would allow Mr. P, through LJP, to participate in the growth of the locksmith business. It would also allow the spouses to deal separately with their respective estates. Shortly thereafter the couple divorced, but they continued the new business arrangement. Mr. P changed his will to disinherit his children. Mrs. P left her estate to them. The CRA deemed LJP Sales to be associated with Jo-Van under subsection 256(2.1).

At trial, Mr. and Mrs. P testified that they undertook the reorganization in an attempt to save their marriage and so that they could pursue separate estate-planning strategies. They denied that LJP Sales was incorporated for tax reasons. The accountant confirmed their testimony and said that he developed the business plan to accomplish their objectives in a tax-efficient manner. In argument, counsel for the Crown suggested that even if the court accepted the evidence, it should find that the couple had an "unconscious motive" to reduce tax, citing the decision in *Levitt-Safety* (FCTD 1973). Miller J allowed the appeal. He said, "[I]t is unusual that a court might rely on an unconscious reason of an individual especially where an individual's testimony is so adamantly to the contrary."

It is troubling to think that the Crown might have seriously alleged that it is proper to assess significant tax consequences on the basis of a subconscious state of mind. The Act relies on a variety of "purpose," "primary purpose," and "one of the main purposes" tests. Generally, these tests are found in anti-avoidance provisions and are designed to assist the minister in countering unacceptable tax planning. In practice, however, purpose-based provisions tend to be slippery and difficult to apply fairly. One of the dangers of such provisions is that the tax administration will use them inappropriately. A theoretical case can be made for the proposition that there is no place in a proper tax system for rules based on subjective intention. If such rules are introduced for practical reasons, it ought to be on the understanding that they are to be used sparingly. It is hard to escape the thought that the minister (or his counsel) went too far in attempting to apply subsection 256(2.1) in this case.

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Business Mergers: Partnership Versus Amalgamation

Editor's note: This is another in a continuing series of notes by the author on the pros and cons of using partnerships.

The partnership is an often overlooked alternative to an amalgamation in structuring a merger of corporations. While an amalgamation is usually the preferred route, there may be times when this option is not available for corporate or regulatory reasons, or because the tax consequences are undesirable. In those situations, a partnership may provide a tax-effective way of merging the business operations. The discussion that follows sets out some income tax and other matters to consider when one is deciding between a partnership and an amalgamation for a particular merger transaction. The discussion is not intended to be comprehensive; rather, it illustrates the sort of analysis involved in a comparison of the two approaches.

Ability To Choose a Taxable or Non-Taxable Transfer

A section 87 amalgamation results in a rollover at both the shareholder level and the corporate level. In theory, it is possible to structure a corporate amalgamation on a non-rollover basis; in practice, however, this is not easy to do. For reasons of certainty, it is usually advisable to effect an amalgamation under section 87. The tax implications of a non-qualifying amalgamation may result in unwelcome disputes with the CRA. On the other hand, a merger by way of partnership can be done on either a taxable or a rollover basis if each partner is a Canadian resident. The subsection 97(2) rollover is not automatic, so it is open to the partners to elect taxable or rollover treatment. If the partners have losses available or are non-taxable entities, the transfer to the partnership can be done on a taxable basis in order to step up the basis of the assets transferred.

Taxable Versus Flowthrough Entity

The company formed by the amalgamation (Amalco) is a taxable entity. Any losses of Amalco are trapped inside the corporation and cannot be distributed to its shareholders. Amalco's earnings can be distributed to its shareholders on either a pre-tax basis (as management fees subject to the reasonableness test in section 67) or an after-tax basis as tax-free intercorporate dividends (assuming that there is no part IV tax liability). In the partnership model, income (or loss) is allocated to the partners and is not taxed at the partnership level. This is especially important for tax-exempt partners: a partnership saves them the corporate level of tax.

Other Taxes

On an amalgamation under Ontario law, no Ontario land transfer tax, retail sales tax, or GST is payable. There is no doubling up of the employer's portion of CPP and EI because the CRA takes the position that Amalco is not a new employer. In the case of a partnership, however, Ontario land transfer tax is exigible if real property is involved in the transfer of assets. A partnership is considered to be a person for the purposes of the GST. No GST is payable on the contribution of assets by the partners when the partnership is formed, provided that an election is filed under section 167 of the Excise Tax Act. When a new partnership is formed, Ontario takes the position that retail sales tax is not payable by the partners on taxable assets transferred to the partnership, provided that each partner paid the applicable retail sales tax when the assets were originally purchased.

Loss Carryforwards and Acquisition of Control

Amalco is permitted to apply the non-capital loss carryforwards of each predecessor corporation in computing its taxable income, subject to the timing and acquisition-of-control rules. An acquisition of control will limit the use of some of the predecessor corporation's tax accounts by Amalco. In the case of a merger by partnership, the tax accounts, including non-capital losses, stay with the partners. The contribution of a business to a partnership does not result in an acquisition of control of either the corporation or the partnership. If a contributing partner becomes (or is) a majority-interest partner, there may be limits on the recognition of accrued losses on the transferred assets. The corporate partners continue to have unrestricted use of their losses to apply against future shares of partnership income.

CCPCs and SR & ED

If Amalco is a Canadian-controlled private corporation, it is eligible for the enhanced refundable SR & ED investment tax credit (ITC) of 35 percent on its first $2 million of annual eligible expenditures. If two CCPCs transfer their businesses to a partnership, the interaction of the partnership rules and the ITC rules denies the partners the benefit of the enhanced rate: *Canadian Solifuels Inc.* (FCA 2001). The partners are eligible only for non-refundable ITCs at the standard rate. Depending on the circumstances, the loss of the extra 15 percent and refundability of the ITCs may militate against the partnership option when any significant amount of SR & ED is involved.

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GST: Ignore It at Your Peril

Especially in financially difficult times, owner-managers may sometimes forget (or choose not to) pay close attention to the legal details of their businesses. This is especially true for GST and general corporate obligations.

A business's status as a corporation usually requires the filing of various fees, documents, reports, and returns. A GST registration in particular requires the owner-managers to be meticulous about a business's obligations to remit payments to the CRA. Two recent GST cases show what can happen when owner-managers are careless in monitoring the details of their businesses.

In *Dion* (TCC 2002 [GST]), the taxpayer operated a hairdressing salon and employed several workers. In mid-1990, she closed her salon and began to operate the business on a smaller scale out of her home. She applied for a GST registration at the end of 1990. She was issued two separate account numbers in error. In May 1991, she cancelled her GST registration, or so she believed. In fact, she had cancelled one of the GST accounts but not the other.

Over the next few years, the taxpayer received more than 35 notices from the CRA demanding that she file GST returns. She ignored the notices because she believed that she was no longer registered. The Tax Court was left to determine whether the fact that she was technically registered during the period in question meant that she was liable for the GST that she should have charged on her revenues.

In a result that seems draconian, the court found that even though the taxpayer should not have received two GST registrations in the first place, she was still technically registered during the period in question. Moreover, it was impossible for her to have cancelled her registration as she believed she had done, because subsection 242(2) of the Excise Tax Act requires a year's wait between registration and cancellation. The fact that the taxpayer was still a small supplier (her annual sales were under $30,000) did not matter: because she was registered during the period, she was obliged to charge GST.

The taxpayer was not represented by counsel at trial and chose to argue the case herself. (The case was heard under the informal procedure rules.) It does not appear that the taxpayer, counsel for the minister, or the court considered whether the second registration was void ab initio in view of the valid first registration. This might have been a basis upon which the appeal could have been allowed.

In *Amerey* (TCC 2003 [GST]), the taxpayers, four brothers, were assessed for a business's unremitted GST. They were the shareholders of Amerey Enterprises Inc., which had been struck off the Alberta corporate registry in 1993 for failure to file annual returns. The brothers continued to carry on the same business in the company's name until the corporation was revived in August 2000, retroactive to December 31, 1995.

The taxpayers argued that since the corporation had been revived retroactively, it—and not the taxpayers personally—had been carrying on the business for the entire time. (This argument was somewhat inconsistent, since for income tax purposes the taxpayers had accepted an earlier favourable audit on the basis that they were operating as partners.) They relied on the wording of section 208(4) of the Business Corporations Act of Alberta, which reads as follows:

> A corporation is revived on the date shown in the certificate of revival and, subject to any reasonable terms that the Registrar may impose and to rights acquired by any person prior to the revival, the corporation is deemed to have continued in existence as if it had not been dissolved.

The question before the court was whether the taxpayers or the corporation had made the supplies in issue during the period from January 1, 1996 to December 31, 2001. The court said that section 208(4) was intended to preserve contracts and other third-party dealings that were entered into in good faith on behalf of the corporation while it was dissolved. "The key is good faith," said McArthur J. In the present case, the appellants were "clearly not acting in good faith because by virtue of the first audit . . . they are deemed to have admitted to [the CRA] that they were operating as partners, in a partnership." The court found that the taxpayers were liable for the GST as it became due, and the fact that the corporation was revived was irrelevant to that liability. The taxpayers were carrying on business as partners and therefore were liable personally for the unremitted GST.

The lesson? Owner-managers who choose to operate through a separate legal entity such as a corporation, or even a partnership, cannot turn a blind eye—whether innocent or wilful—to the legal details of their businesses. Failure to dot the i's and cross the t's can lead to unpleasant and sometimes unfair results.

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Revival Order: Shareholder Personally Liable for Corporation's Tax

Under the corporation statutes of the provinces and Canada, the authorities may dissolve a corporation for a number of reasons, including the failure to file annual returns of information and pay the attendant fees. (See, for example, section 212(1) of the Canada Business Corporations Act.) In the event of a dissolution, an interested party (a former shareholder, for instance) may apply for an order of revival to restore the corporate status of the dissolved corporation. What if the shareholder of a dissolved corporation, being unaware of (or indifferent to) an order of dissolution, continues to carry on the business in the old corporate name? Does the shareholder become personally liable for tax on the business income? This was the question in *Dello* (TCC 2003).

The appellant incorporated a company (C Co) under the CBCA in 1979. C Co was dissolved by the authorities in 1984 for its failure to file annual returns. An application for revival was submitted in 1990, but the supporting material was incomplete, and a certificate of revival was not issued until 1998. However, in 1991 the CRA issued a business number and a GST registration in the name of C Co. A business was carried on in the name of C Co between 1991 and 1994. There was evidence that the appellant acted in good faith in believing that C Co was the person carrying on the business. However, the minister assessed the appellant, not C Co, for tax on the business income.

The principal issue on the appeal was a legal one—namely, what was the effect of the revival order issued in 1998? Specifically, did it have retroactive effect so as to reinstate the legal existence of C Co as of 1991? The court said that it did not. Consequently, the appellant was properly assessed as the person carrying on the business during the years under appeal.

The case is instructive on two important points. The first is the finding that once a corporation is dissolved, it loses all capacity to act. In law, it ceases to exist and therefore cannot carry on a business. Any income earned after dissolution belongs to (and is taxable in the hands of) the person who generated it through his activity, even if that person claimed to do so on behalf of the corporation.

The second point goes to the effect of an order of revival. Once a corporation is reinstated, is its existence revived back to the date of dissolution? The court said that this depended on the wording of the statutory provision under which the corporation is revived. In this case, the applicable provision was section 209(4) of the CBCA as it applied in 1998. At the time, the section spoke of the corporation being revived and thereafter having all the rights and obligations that it would have had if it had not been dissolved. The court said that this did not give the order retroactive effect. It cited a 2001 amendment to the section, which makes it clear that the corporation *is* restored to the position it would have been in if it had not been dissolved. Had the order been issued under the amended section, the corporation would have been liable for tax on the business income. Because the order was made under the earlier version of the section, the appellant was the responsible person.

Provincial corporate authorities have become aggressive in recent years in dissolving corporations that fail to file annual returns on a timely basis. It is not uncommon for shareholders of such corporations to continue the business as if the corporation were still legally alive. *Dello* illustrates the tax consequences in such a case. Upon the issuing of an order of dissolution, the corporation loses all capacity to carry on a business. The persons carrying on the business in fact will be taxable on any income generated by the business. If an order of revival is obtained, the effect of it (retroactive or not) will depend on the precise language of the applicable corporate statute. If the CBCA applies, the order will now have retroactive effect. A similar result should apply in Ontario under section 241(5) of the Ontario Business Corporations Act, although the language there is not identical to that in the federal statute. If the corporation is subject to the corporate law of another province, the wording of the applicable statute will dictate the result.

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