REVIEW OF CURRENT TAX CASES

Prepared for:
2019 CPA FORUM NORTH

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**CREDIT TO SHL**
- **Kootenay v. R (2019 TCC 97)**
  - Shareholder made personal expenditures, credit made to SHL
  - Shareholder did not draw down SHL
  - CRA assessed ss. 6(1) benefit on increase to SHL
- **Appeal allowed**
  - Court found no benefit received by shareholder
  - Benefit only received once SHL is withdrawn
  - Follows Chaplin v. R (2017 TCC 194) where incorrect bookkeeping entry to SHL was not a shareholder benefit

**EXCESS REFUNDS**
- **984274 Alberta Inc. v. R. (2019 TCC 85)**
  - In 2003, 984274 Alberta Inc., a subsidiary of Henro Holdings Corporation, reported capital gain from disposition of parcel of land
  - In 2010, Minister reassessed Henro and 984274, reducing 984274's capital gain to nil and refunding capital gains tax plus interest
  - In 2015, Minister reached agreement with Henro ("Settlement") and again reassessed 984274, seeking return of the excess refund

- **2010 Assessment null and void, issued outside of 984274's normal reassessment period**
  - 984274 not a party to Henro's appeal settled pursuant to s. 169(3)
  - 984274 could not consent in writing to allow Minister to reassess tax, interest, penalties or other amounts payable under terms of Settlement
  - 2015 Reassessment null and void as against 984274
  - 2003 Assessment, which assessed 984274 for tax in connection with capital gain, subsisting

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EXCESS REFUNDS

- 984274 Alberta Inc. v. R. (2019 TCC 85)
- Appeal allowed (Case has been appealed to the FCA)
  - 984274 did not make overpayment under 2003 Assessment (the only subsisting assessment)
  - Minister therefore did not make refund or refund interest payments to 984274 pursuant to s. 164(1) and (3), or any other provision in Act
  - Payment made in error, without statutory authority
  - Minister not entitled to reassess 984274 under s. 160.1(1) and (3) for excess refund payments

REQUIREMENT FOR INFORMATION

- R v. Atlas Tube Canada ULC (2018 FC 1086)
  - The taxpayer was involved in a take-over transaction
  - In the course of a CRA audit, the existence of an accounting report regarding tax issues in connection with the transaction was discovered by the CRA
  - CRA requested the report, the taxpayer claimed the document was privileged
  - CRA brought an application requesting disclosure of the report
  - The Court ordered the report be disclosed
  - The accounting report was found to not be privileged because it was produced by an accountant and did not pertain to the provision of legal advice
  - The report went beyond the provision of information to or from the solicitor and instead provided an accounting opinion, which is not subject to privilege
REQUIREMENT FOR INFORMATION

  - The CRA’s audit powers for non-criminal purposes are extensive and may include:
    - Request to inspect books, records, property or inventory and to enter into business premises for that purpose
    - Application for a warrant to enter a private residence
    - Requiring any person to produce any document
    - Conducting a search and seizure of records, by way of a warrant

- Limited by solicitor-client privilege (Chambre des notaires case from the SCC)
  - Assertion of privilege requires the placement of the document in a separate package, privilege to be determined by the court

- Where a criminal investigation is being considered, Charter rights are triggered and the power to compel production is more limited

- **Section 231.7 of the Act** gives the jurisdiction for the CRA to request disclosure of documents relevant to the audit unless they are subject to solicitor-client privilege

- Accounting reports can be subject to solicitor-client privilege in certain circumstances

- Decision is currently under appeal, and CPA Canada has successfully received leave to intervene
REQUIREMENT FOR INFORMATION – PAST CASES

1. Redhead Equipment Ltd. (2016 SKCA 115) – Accountants & Privilege
   - In general, for privilege to be maintained over a communication with an advisor that is not a lawyer:
     • That party must act as a channel of communication between lawyer and client, or
     • their advice must be essential to the provision of the applicable legal advice.
   - Consider limiting circulation of key documents in transactions involving non-legal advisors.

2. BP Canada (2017 FCA 61)
   - CRA sought disclosure of tax accrual working papers (“TAWPs”) as part of its audit (beyond the scope of the specific issue under audit)
   - Application dismissed
     - The power to compel disclosure of TAWPs is within the scope of the CRA’s broad audit powers, but not without restriction
     - Cannot compel a taxpayer to “self-audit” or reveal “soft spots”
     - TAWP likely compellable if TAWP relate to a specific issue under audit

COMMON INTEREST PRIVILEGE

1. Igglis v. R (2018 FCA 51)
   - CRA sought disclosure of a legal tax planning memorandum (prepared by legal counsel for one party with input from legal counsel for opposing party)
   - The taxpayer asserted common interest privilege
   - Common interest privilege: (1) if an otherwise privileged communication is shared, (2) on a confidential basis, (3) with another party that has a sufficient common interest in the same transaction
COMMON INTEREST PRIVILEGE

- *Iggillis v. R* (2018 FCA 51)
  - Federal Court held that advisory common interest privilege was not a valid subset of solicitor-client privilege
- **Appeal allowed**
  - FCA reversed the FC decision
  - Leave to appeal to the SCC denied
- **Planning point**: Mark documents with "common interest privilege" where parties wish to claim such, or enter into a common interest privilege agreement

ACCOUNTANT ERROR – STATUTE-BARRED?

- *Prima Properties v. R* (2019 TCC 4)
  - Taxpayer originally leased a building to a tenant that used the building as a hotel
  - In 2009, the building was rented to a different tenant that used the building as a shelter for the homeless, a residential use
  - Change in use from commercial to residential triggered a self-supply of the building
  - Taxpayer neglected to inform accountant of the change in use

ACCOUNTING ERROR – STATUTE-BARRED?

- *Prima Properties v. R* (2019 TCC 4)
  - In 2016, CRA assessed $1.2M of GST due to the deemed self-supply
  - 2009 year was statute-barred
  - Statute-barred unless the Registrant had made an error in filing its return attributable to neglect or carelessness (ss. 298(4))
ACCOUNTING ERROR – STATUTE-BARRED?

- **Prima Properties (92) Ltd v. R (2019 TCC 4)**
  - Appeal allowed – deemed self supply did not occur
    - In obiter, Court held that the taxpayer also was not negligent in not informing the accountant of the change in use
    - The taxpayer could not have been expected to know about “the possible application of a highly technical provision”, an “unrealistically high standard of care” expected of a lay person

STATUTE-BARRED

- **Revera v. R (2019 FC 239)**
  - Accountant over-reported income of corporation by $9M
  - Year was statute-barred, no waiver filed
  - Taxpayer requested reassessment on basis error was attributable to carelessness, neglect or wilful default
  - CRA refused to reassess corporation
  - Application allowed (Case has been appealed to the FCA)
    - The court held that a taxpayer can claim “self-negligence” to open a statute-barred year

15(2) SHAREHOLDER LOAN BENEFIT

- **Mazzaferrro v. R (2019 TCC 147)**
  - Taxpayer had shareholder loan outstanding for more than 2 years
  - 15(2) income inclusion in year loan made
  - Did not seek advice regarding tax impact of loan
  - Year in which loan was made was statute-barred
  - CRA assessed 15(2) benefit in year loan made
  - Appeal dismissed
    - Court found actions negligent or careless
EXECUTOR WAS ACCOUNTANT

- **Lewin Estate v. R** (2019 TCC 21)
  - Taxpayer died owning shares of corporation
  - Accountant of taxpayer was executor
  - Executor negligently miscalculated the FMV of the shares
  - Terminal T1 filed in 2008, CRA reassessed in 2014
- **Appeal dismissed**
  - Since executor was accountant and negligent in calculating the FMV, Terminal T1 was not statute-barred
  - Accountant held to a higher standard

AMENDMENT VS. OBJECTION?

- **6075240 Canada v. R** (2019 FC 642)
  - CRA arbitrarily assessed taxpayer
  - More than 3 years after the assessments, the taxpayer attempted to file tax returns and requested that the relevant years be amended
  - No objection or waiver was filed
  - CRA refused

AMENDMENT VS. OBJECTION?

- **6075240 Canada v. R** (2019 FC 642)
- **Application dismissed (Case has been appealed to the FCA)**
  - The statute-barred provisions are not just for the benefit of taxpayers
  - Practice point: Beware of relying on the filing of amended returns (or adjustments) to correct prior assessments (especially arbitrary assessments)
**AMENDMENT VS. OBJECTION?**

- *6075240 Canada v. R (2019 FC 642)*
  - Objections preserve legal rights
  - An amendment is a request that the CRA make an adjustment
    - CRA may refuse to make the adjustment even if within the 3 year statute-barred period

**STATUTE-BARRED DEFENCE**

- *Levatte v. R (2019 TCC 177)*
  - 2 properties transferred on death to a spousal trust
  - Spouse died
  - Deemed disposition of properties not reported on T3
  - Reassessed after statute-barred period

  - Appeal dismissed
    - Spousal trust only had 2 properties
    - Ought to have known tax consequences on death

**LATE FILED T2057 FORMS**

- *Masson v. R (2019 FC 887)*
  - Taxpayer sold properties to his corporations
  - Assessed capital gain on dispositions at FMV
  - Late filed T2057 forms, denied by CRA

  - Appeal dismissed
    - Sale documents did not contemplate using ss. 85(1)
    - No evidence of intention to use ss.85(1) when transferred
Gillen v. R (2019 FCA 62)
- Licenses were acquired by a corporation owned by Mr. Gillen, named Kinderock, with the intention of being used in one of the businesses of Mr. Gillen’s ownership group.
- Kinderock wished to transfer the licenses to another corporation via a limited partnership, for tax planning reasons.

Kinderock

Exploration Licenses

Gillen v. R (2019 FCA 62)
- A limited partnership was formed with a family trust as the limited partner and Kinderock as the general partner.
- In December, 2007, Kinderock transferred to the partnership on a rollover basis the licenses valued at $675,000.

Kinderock

FT

LP

Partnership

Exploration Licenses

Gillen v. R (2019 FCA 62)
- The partnership immediately transferred the licenses to a corporation, Devonian, on a tax deferred basis.

Kinderock

FT

GP

LP

Partnership

Devonian

Exploration Licenses
In March 2008 (4 months later) an offer was received by the partnership to purchase the shares of Devonian for $15,000,000. The partnership allocated a portion of the capital gain to the Family Trust. The Family Trust allocated a portion of the capital gain to Mr. Gillen and his family. Mr. Gillen claimed his capital gains deduction on the basis that the shares of Devonian were QSBC shares.

Para. 110.6(14)(f)

- The 24 month hold test requires no unrelated persons to own the shares for the previous 24 months.
- Para. 110.6(14)(f) deems shares to not be owned by unrelated persons if the shares were issued in consideration for property that consisted of all or substantially all of the assets used in an active business carried on by the transferor.

Appeal dismissed (at both TCC and FCA)

- The Courts held that para. 110.6(14)(f) did not apply since the licenses were never used by the partnership in a business carried on by the partnership.
- The partnership had acquired the right to the licenses and immediately transferred the licenses to Devonian before using the licenses.
REFERRALS BY ADVISORS

- **Salomon v. Matte-Thompson (2019 SCC 14)**
  - A lawyer referred a client to an investment advisor to make certain offshore investments.
  - Investment advisor was a close personal friend of the lawyer.
  - After repeated assurances from the lawyer, the client decided to invest in the offshore investments with the investment advisor.
  - Offshore investment was a fraud and the client lost its capital.
  - A reminder that professionals owe a duty of care to their clients in making a referral.

RECTIFICATION

- **Crean v. R (2019 BCSC 146)**
  - Brothers owned shares of a corporation 50/50.
  - Instructions by brothers to lawyer: Brother 1 to acquire shares from brother 2.
  - Advisor devised a plan for the corporation of brother 1 to purchase the shares from brother 2 – s.84.1 applied.
  - Rectification requested to have brother 1 instead of brother 1’s corporation purchase the shares from brother 2.

- **Application allowed**
  - Court held a valid prior agreement was in place.

FOUR CONDITIONS REQUIRED

- **Crean v. R (2019 BCSC 146)**
  - The existence and content of a “definite and ascertainable” prior agreement.
  - The agreement was in effect at the time the instrument sought to be corrected was executed.
  - The written agreement was inconsistent with the prior agreement.
  - The precise manner in which the written document could be amended to carry out the prior agreement was known.
RECTIFICATION AND RESCISSION

 Ø Collins v. R (AG) (2019 BCSC 1030)
   - Taxpayer implemented planning in 2008 based on interpretation of ss.75(2) at the time
   - The interpretation was changed due to a subsequent court decision (Sommerer v. R (2012 FCA 207)) and CRA assessed based on the subsequent decision
   - Taxpayer sought rescission on the basis of an error of law, namely that the transactions would have been done differently had the taxpayer known the interpretation of ss.75(2) based on the subsequent Court decision

RECTIFICATION AND RESCISSION

 Ø Collins v. R (AG) (2019 BCSC 146)
   - Almost identical facts as the Pallen case (2015 BCCA 222) wherein rescission was allowed
   - However, Fairmont (2016 SCC 56) severely restricted rectification applications so the Minister argued rescission should not be allowed
   - Rescission allowed
     o The Court held that Fairmont only dealt with rectification and not rescission, and therefore the Court held that it had to follow Pallen

RECTIFICATION AND RESCISSION

 Ø What is the difference?
   - Rectification: Correcting documentation that incorrectly reflects the terms of an agreement
   - Rescission: Voiding a transaction entered into on the basis of a fundamental mistake
256(2.1) ASSOCIATION

- **Jencal v. R (2019 DTC 1019) (TCC)**
  - 256(2) plan – no longer available
  - Key: KPMG planning memo indicated that the reduction in income taxes was an important reason for the existence of the holding corporations
- **Appeal dismissed**
  - Reduction in income taxes cannot be one of the main reasons for the separate existence of the corporation

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256(2.1) ASSOCIATION

- **Prairielane v. R (2019 TCC 157)**
  - 2 associated corporations operated 2 separate businesses
  - No SBD due to too much taxable capital
  - Reorganization into a 2-tier partnership structure
  - 2 SBDs since no longer associated
  - Tax deferral
  - 256(2.1) applies where one of the main reasons of corporation's existence is to access SBD previously unavailable

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256(2.1) ASSOCIATION

- **Prairielane v. R (2019 FC 157)**
- **Appeal allowed**
  - Tax advisor did not realize SBD would be available
  - Was “dumb luck” that resulted in access to SBD
  - One of the main reasons was tax deferral
GROSS NEGLIGENCE PENALTIES

- **Phenix v. R (2018 TCC 204)**
  - Taxpayer had $10,000,000 in revenue per year through a corporation
  - Corporation paid a dividend to the taxpayer
  - Accountant failed to report dividend income
  - CRA assessed gross negligence penalties

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GROSS NEGLIGENCE PENALTIES

- **Phenix v. R (2018 TCC 204)**
  - Appeal allowed
    - Taxpayer had no history of unreported income
    - Taxpayer typically received a mix of salary and dividend, but in some years the taxpayer would receive no dividend
    - The ordinary practice of the accountant, which involved hand-delivering T5s, was not followed in this case

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GROSS NEGLIGENCE PENALTIES

- **Kajtor v. R (2018 TCC 6)**
  - Taxpayer used H&R Block to file her T1
    - Her brother-in-law recommended another T1 preparer who claimed fictitious business losses for taxpayer
  - Appeal allowed
    - Brother-in-law showed taxpayer his CRA refund cheque
    - Taxpayer conducted a police and CRA background check on the tax preparer
CRA TO QUESTION EMPLOYEES?

- **R. v. Cameco (2019 FCA 67)**
  - Taxpayer subject to a CRA transfer pricing audit
  - CRA requested that certain employees of Cameco, including those of its foreign subsidiaries and some who had retired, attend for oral questioning
  - Cameco refused and CRA applied for an order compelling the employees to submit to questioning
  - Federal Court: refused to grant compliance order – the request to interview 25 employees was not proportional to the matter under review

CRA TO QUESTION EMPLOYEES?

- **R. v. Cameco (2019 FCA 67)**
  - FCA: Upheld Federal Court’s decision but for different reasons:
    - Majority concluded the CRA was not permitted to compel any interviews
    - CRA’s audit powers are limited to audit, inspection and examination of documents and records, with only a limited ability to compel answers to questions about the source and location of documents and records
    - CRA is not entitled to compel taxpayers to provide answers to questions directed at understanding facts and issues under audit

CRA TO QUESTION EMPLOYEES?

- **R. v. Cameco (2019 FCA 67)**
  - While paragraph 231.1(1)(a) allows CRA to examine the books and records of the taxpayer, it does not grant CRA the authority to compel the employees of a taxpayer to submit to an oral interview
  - This does not mean a taxpayer "should" refuse to answer all CRA audit questions; however, a taxpayer may exercise its discretion not to respond to certain questions based on strategic considerations
**Mini Entrepot v. R (2018 CCI 106)**
- Taxpayer carried on a storage rental business
- Leasing real property is a “specified investment business” unless “more than 5 full time employees” are employed by the business
- Taxpayer had 12,000 work hours of part-time employees
- Assuming full time employees work 2,080 hours per year, the hours worked were equivalent to having more than 5 full time employees

**Mini Entrepot v. R (2018 TCC 106)**
- Appeal dismissed
  - The court held that SIB test is not an hours equivalent test but literally requires at least 5 full time employees
  - However, the decision of Huntly v. R (2017 TCC 255) appears to suggest that if: (i) the taxpayer had a management corporation that provided services to the rental business; (ii) the management corporation met the hours equivalent test with its employees (full time or part time), perhaps the test would be met and the rental business would not be a SIB

**Black v. The Queen (2019 TCC 135)**
- Black borrowed USD $32.3M (“Quest Loan”) for purposes of paying two damage awards against him, one of which was against him and Hollinger Inc. jointly
- Black agreed to advance the funds to Hollinger to enable it to pay its share of the damages award
- Loan agreement between Black and Hollinger never reduced to writing
- Hollinger later disputed that it owed any amount to Black
**INTEREST DEDUCTIONS**

- **Black v. The Queen (2019 TCC 135)**
  - To deduct interest expenses, Black required to demonstrate that he used Quest Loan for purpose of earning non-exempt income from property (i.e. to make an interest-bearing loan to Hollinger)
  - Minister denied Black’s interest expense deduction on basis that there was no enforceable loan between Black and Hollinger, only an agreement to agree

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**INTEREST DEDUCTIONS**

- **Black v. The Queen (2019 TCC 135)**
  - **Appeal allowed**
    - Black and Hollinger reached an agreement (not merely an agreement to agree)
    - Black’s ancillary purpose for making loan to Hollinger was to earn interest income to recoup interest expenses on Quest Loan
    - Gross income/an ancillary purpose sufficient for purpose of establishing interest deductibility

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**RE-APPROPRIATION OF TAX REFUND**

- **Forbes v. R (2019 FC 160)**
  - Corporation failed to file certain T2s within 3 years of their due dates
  - Arbitrary assessment by CRA and tax liability collected
  - Corporation filed T2s resulting in a refund – refund denied
  - Corporation owed income tax and source deductions in other years
  - First and second requests for re-appropriation denied

- **Application allowed**
  - Financial hardship is a valid basis for re-appropriation
  - Cybannių, Pomeroy’s Masonry, Referred Realty
DIRECTOR LIABILITY – ABIL CLAIM

- **Grubner v. R (2018 TCC 39)**
  - Corporation failed to pay a GST debt
  - Shareholders personally liable (due to also being directors) so they paid the GST
  - Payment recorded as a SHL – no interest paid or documentation
  - Shareholders claimed an ABIL for the SHL

- **Appeal dismissed**
  - Debt must be incurred to earn income
  - Should have lent the funds to the corporation at interest

INCOME VS CAPITAL

- **Bygrave v. R (2019 TCC 138)**
  - Taxpayer purchased property, intended to live in it
  - Father died and mother had to move in with taxpayer
  - Could not live in the property so sold it before moving in
  - Reported capital gain
  - Assessed as income with gross negligence penalties

- **Appeal allowed (income and GN penalties)**
  - Intention to live in property before death of father

LAND VALUATION METHODS

- **Stellarbridge Management Inc. v. The Queen (2019 TCC 134)**
  - Stellarbridge bought land in 2006 for $7.3M
  - In 2010, Stellarbridge deducted $1.91M on account of diminution of FMV of land in relation to its cost, in accordance with s. 10(1)
  - Minister reassessed Stellarbridge and disallowed deduction on basis that land had not declined in value
LAND VALUATION METHODS

- Stellarbridge Management Inc. v. The Queen (2019 TCC 134)
  - Experts arrived at different valuation conclusions
  - Stellarbridge expert used “subdivision development approach” (“SDA”) to value the land at $5.65M
  - CRA expert used “direct comparison approach” (“DCA”) to value the land at $13.8M
  - Several issues with the land, including a First Nations burial ground, road access, delay in servicing, and fill importation

- Appeal dismissed
  - Remediation/road access construction costs not included in valuation, insufficient evidence of reasonable estimates
  - Some fill costs claimed not included in valuation, amount calculated with use of information not known at valuation
  - DCA method inappropriate, limited number of comparable sales
  - TCC applied SDA method, concluded FMV of land at valuation date not less than its cost, appellant not entitled to deduction

DIVIDEND RECEIVED?

- Trower v. R (2019 TCC 77)
  - The taxpayer and her ex-husband were 50/50 shareholders of a corporation
  - Dividends were usually paid annually to each shareholder as part of an income splitting strategy to minimize income taxes
  - In the tax year in dispute, the taxpayer and her ex-husband separated
  - In October 2016, she ceased to be a director and shareholder
  - Ex-husband approached the taxpayer in early 2017 and asked if they could engage in the annual income splitting strategy for 2016 but the ex-husband would take the full amount of the dividends and reimburse the taxpayer for her portion of the income taxes
**DIVIDEND RECEIVED?**

- **Trower v. R (2019 TCC 77)**
  - The taxpayer refused
  - The ex-husband did the plan anyways and issued the taxpayer a T5 in the amount
  - Taxpayer was assessed for the dividend
- **Appeal allowed**
  - The Court held that a dividend was not actually received by the taxpayer
  - The T5 was not determinative; dividend must be received
  - There was no evidence of intention in 2016 to pay the dividend so the Court questioned whether the dividend was valid

**DOUBLE CDA PLAN – GAAR APPLIES?**

- **Gladwin v. R (2019 TCC 62)**
  - A corporation sold land with a $24M unrealized gain
  - The shareholder engaged in a series of transactions resulting in $24M of CDA with only $12M of net taxable capital gain
  - Opening structure:
Gladwin v. R (2019 TCC 62)

Step 2: Land is sold for $24M of cash resulting in $24M capital gain.

LP

OldCo

ACB = $nil

NewCo

Cash $24M

Step 3: The LP distributes $24M of cash to OldCo resulting in a reduction of OldCo's interest by $24M deeming an immediate capital gain of $24M with $12M being added to the CDA of OldCo and a reset of the ACB to $nil.

LP

OldCo

ACB = $nil

NewCo

Cash $24M

Step 4: At the fiscal year end of the LP, the LP allocates $24M of the capital gain to OldCo, $12M added to the CDA of OldCo, increasing the ACB to $24M.

LP

OldCo

ACB = $24M

NewCo

Cash $24M
DOUBLE CDA PLAN – GAAR APPLIES?

- **Gladwin v. R (2019 TCC 62)**
  - OldCo pays out a $24M capital dividend, OldCo then elects under ss. 40(3.12) to treat its $24M ACB in its partnership interest as a $24M capital loss resulting in a net capital gain of $24M.

- **DOUBLE CDA PLAN – GAAR APPLIES?**
  - **Gladwin v. R (2019 TCC 62)**
    - OldCo pays out a $24M capital dividend, OldCo then elects under ss. 40(3.12) to treat its $24M ACB in its partnership interest as a $24M capital loss resulting in a net capital gain of $24M.
  - **GAAR assessed denying $12M of CDA**
  - **Appeal dismissed (Case has been appealed to the FCA)**
    - The taxpayer has technically complied with the Act.
    - However, the Court held that the definition of CDA contained in 89(1) and subsection 40(3.12) was abused because the taxpayer achieved over-integration.
    - While CDA timing transactions are not in and of themselves abusive, going one step further and multiplying CDA is abusive.

- **COSTS AWARDED TO MINISTER**
  - **Buday v. R (2019 TCC 164)**
    - At least 5 days of trial time wasted
    - Disorganized documents, questioned auditor improperly, insufficient consideration of evidence submitted, avoided testimony, and submitted evidence on minor points
    - $48,000 costs awarded to Minister
      - Meritless submission by taxpayer to not pay any costs
      - Triple award for cost submission granted
SECTION 174

- Boguski v. The Queen (2018 TCC 236)
  - TCC considering numerous appeals relating to Canadian development expenses for certain mining rights purchased from Royal Crown Reserve Inc.
  - TCC designated two appeals as lead cases ("Lead Cases"), all others appeals held in abeyance
  - Minister filed application under section 174 with respect to large group of unrelated taxpayers who had filed a notice of objection but had not agreed to be bound by TCC's decision in Lead Cases
  - If application successful, taxpayers would be joined as parties to the Lead Cases

SECTION 174 APPLICATIONS

- Boguski v. The Queen (2018 TCC 236)
- Application dismissed
  - Hearing involving 42 different parties unfair, inefficient use resources, and inconsistent with TCC's previous ruling that appeals should proceed under Lead Case Rules
  - Question involving mixed law and fact cannot be suitably addressed in hearing involving 42 or more independent parties
  - Manner of discovery and location of the hearing also difficult to determine

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