

# In this issue

3

Picking up the pieces:  
some tax implications of  
investment fraud

8

One key to tax function  
success is Connected Tax

10

Publications  
and articles



## Canada – TaxMatters@EY

November 2018

# Check your sources: treatment of income from online activities

Gael Melville, Vancouver

TaxMatters@EY is a monthly Canadian bulletin that summarizes recent tax news, case developments, publications and more. For more information, please contact your EY advisor.

The question of whether an activity is a hobby or a source of income for tax purposes is not new. But in the digital age an individual can more quickly and easily turn what was previously a hobby into a source of taxable income. Blogging and social media offer individuals access to a global audience for their posts, and there can be revenue opportunities for those who develop a significant following online.

Let's take as an example an individual who is employed as a software developer, but also has a personal interest in travel writing and photography. She could post her travel writing to a blog or social media channel and generate a large following through social sharing of her posts. Initially, she may spend her own money travelling to locations to generate content for online sharing, but as her reputation grows she could also be offered free travel and accommodation in return for promoting certain locations. Eventually, she may partner with businesses to advertise their products directly to her followers, and receive income from that.

Blending commercial and personal activities in this way can make it difficult to determine when a source of income begins. In the example above, the individual may want to deduct her travel expenses in a year before her blog is profitable. So far, few cases or Canada Revenue Agency (CRA) technical interpretations have dealt with blogging and other forms of content creation and sharing. Although the activities themselves are new, the law on what is a source of income has not changed, so we need to look to existing principles to determine the appropriate tax treatment.

## Hobby or source of income: why does it matter?

Identifying if an activity is a hobby or a source of income is important for two main reasons. First, income from a source has to be reported and included in taxable income, and second, expenses relating to a source of income may be deductible against other income. Particularly in the early stages of a business when expenses are high and may exceed income, it may be possible to claim losses. Some examples from case law of unsuccessful claims for losses from activities include: acting as a fishing guide,<sup>1</sup> making videos on sailboat vacations<sup>2</sup> and operating a music studio.<sup>3</sup> In these cases the activities were found to be personal rather than sources of income.

## Current legal test for source of income

No specific *Income Tax Act* provisions cover income earned from blogging or social sharing, so the tax law principles that are used to determine if a source of income exists for a traditional brick-and-mortar business apply. These principles were developed in case law before blogging and social media existed, and focus on whether there is a personal or hobby aspect to an activity.

The legal test of whether a taxpayer has a source of income was established by the Supreme Court of Canada in 2002 in a case called *Stewart v The Queen*.<sup>4</sup> The main question is: is the activity clearly commercial, or is it a hobby? If the activity is clearly commercial, then no further analysis is needed; the related income is taxable and the related expenses can be deducted from the income, provided they meet the other requirements for expense deductibility under the *Income Tax Act*. But if the activity was at least partly a hobby, the facts of the situation are then analyzed to determine whether or not the income from the activity is taxable. The relevant factors used for the analysis vary from situation to situation, but often include the profit or loss history of the activity, the taxpayer's training or specialized knowledge, and the taxpayer's intention or plan for the activity.

## The hockey blogger

In one case<sup>5</sup> from 2015, a former sports journalist started a hockey blog and spent large sums on travelling to follow the team he reported on. In the beginning the blogger focused on creating content to attract an audience, reasoning that advertising revenue would flow from having a large fan following. He had no business plan or financial forecasts and only one sponsor, a lawyer he had met at a party. The taxpayer claimed business losses of \$26,540 and \$37,866 for 2011 and 2012, respectively. The Minister denied the business losses on the basis that the taxpayer did not conduct any business activities.

The Tax Court judge found that the blogger did carry on a business, and allowed him to deduct his expenses (and claim business losses) for the first two years of running his blog. The judge commented that he considered the blog to be in a "start-up phase" and that the taxpayer intended to make a profit, but it was clear that the judge expected the taxpayer to take a more businesslike approach as the blog became better established.

It's also worth noting that this case was heard under the Tax Court's informal procedure, meaning that it doesn't have precedential value.

## The drone video

The taxpayer in this recent CRA technical interpretation<sup>6</sup> had taken a video using a drone and posted the video on social media. The question was whether generating income from the video was a business and, as a result, were the costs of making the video deductible? It wasn't clear from the question how the video would be monetized, but the income could have come from advertising displayed at the start of the video, or from links to an affiliate's site.

The CRA responded that the same rules that apply to other income-generating activities would apply to videos posted on social media; if the taxpayer approaches the activity in a sufficiently commercial manner, it could be considered a source of income for purposes of applying the income tax rules. If so, reasonable expenses can be deducted in calculating the taxpayer's income from the activity.

## Conclusion

Taxpayers who have the potential to receive income from their online activities should keep in mind the principles relating to source of income. If they anticipate large up-front expenses before they receive any income, they must be able to show that a source of income exists if they want to be able to deduct the expenses and claim business losses. Having prior experience in a related field can be helpful in showing a business purpose (as was the case in *Berger*), but equally important is being able to show a commercial approach to earning income. Developing and documenting a business plan and financial projections, as well as taking an organized approach to advertising and marketing, should help a taxpayer show the necessary intention.

<sup>1</sup> *Morris v The Queen*, 2003 TCC 337.

<sup>2</sup> *Arseneault v The Queen*, 2006 TCC 42.

<sup>3</sup> *Cudjoe v The Queen*, 2009 TCC 550.

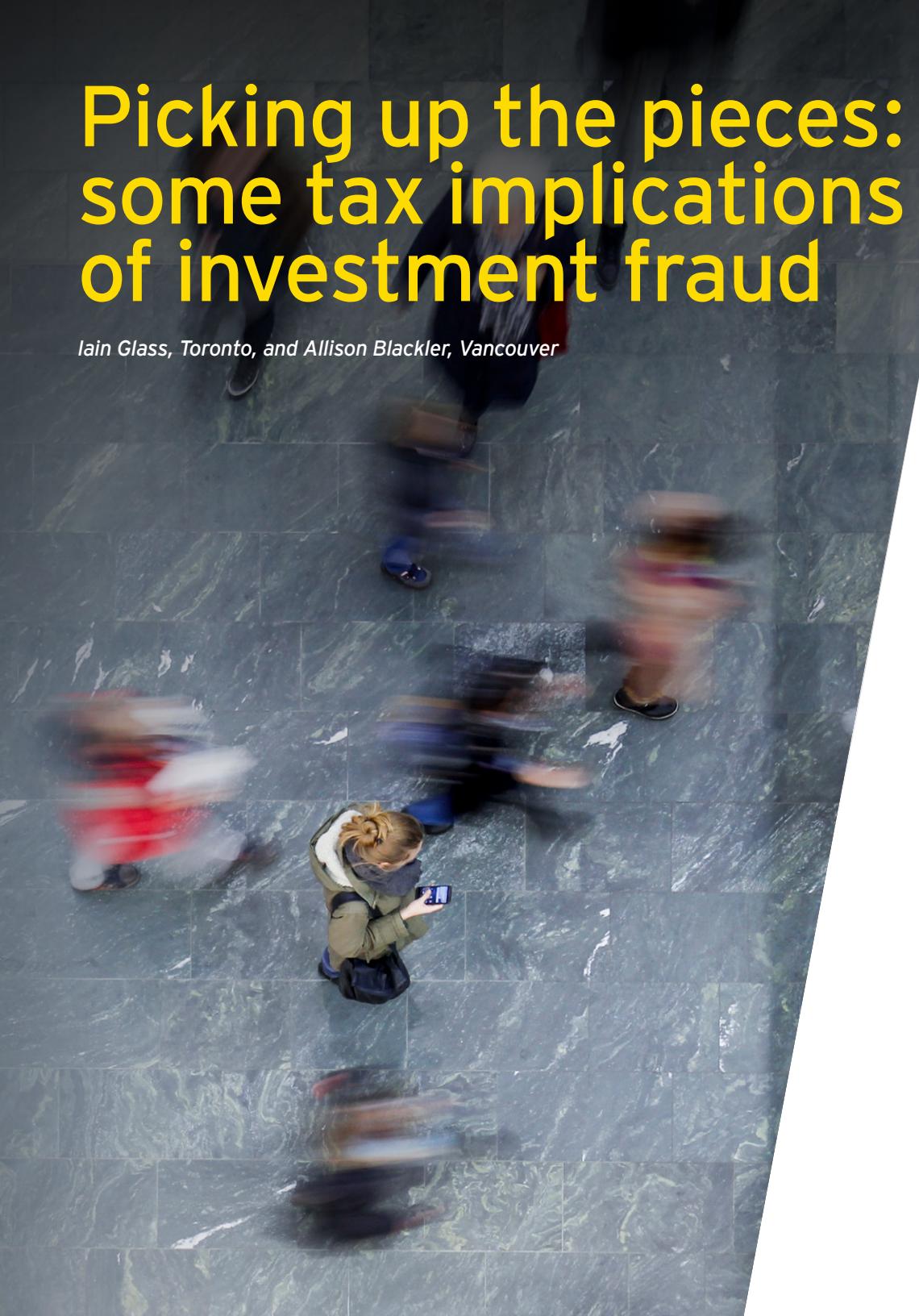
<sup>4</sup> 2002 SCC 46.

<sup>5</sup> *Berger v The Queen*, 2015 TCC 153.

<sup>6</sup> 2017-0731171E5.

# Picking up the pieces: some tax implications of investment fraud

Iain Glass, Toronto, and Allison Blackler, Vancouver



If you lose your investment in a fraud or scam, being unable to recover tax paid on the so-called income or being unable to deduct a loss can add insult to injury. But don't lose all hope: you may still be able to obtain some tax relief, which may help to ease your pain.

In six external technical interpretations<sup>7</sup> released in August and September 2018, the Canada Revenue Agency (CRA) was asked to comment on the tax implications of such schemes. In response, the CRA provided general information that applies to taxpayers who may have participated in what at first blush reasonably appeared to be a legitimate investment, but later turned out to be too good to be true.<sup>8</sup> While the interpretations are clearly written and provide generally helpful guidance in several key areas, it's useful to consider each of those areas by first understanding the larger context of the relevant jurisprudence.

<sup>7</sup> CRA income tax ruling documents 2018-0753081E5, 2018-0752991E5, 2018-0753021E5, 2018-0753001E5, 2018-0753051E5, 2018-0753011E5.

<sup>8</sup> The advice will not apply to a taxpayer who knowingly participated in a scheme for tax avoidance purposes. See the opening comments in CRA document 2014-0531171M6.

## The context of the CRA's technical interpretations

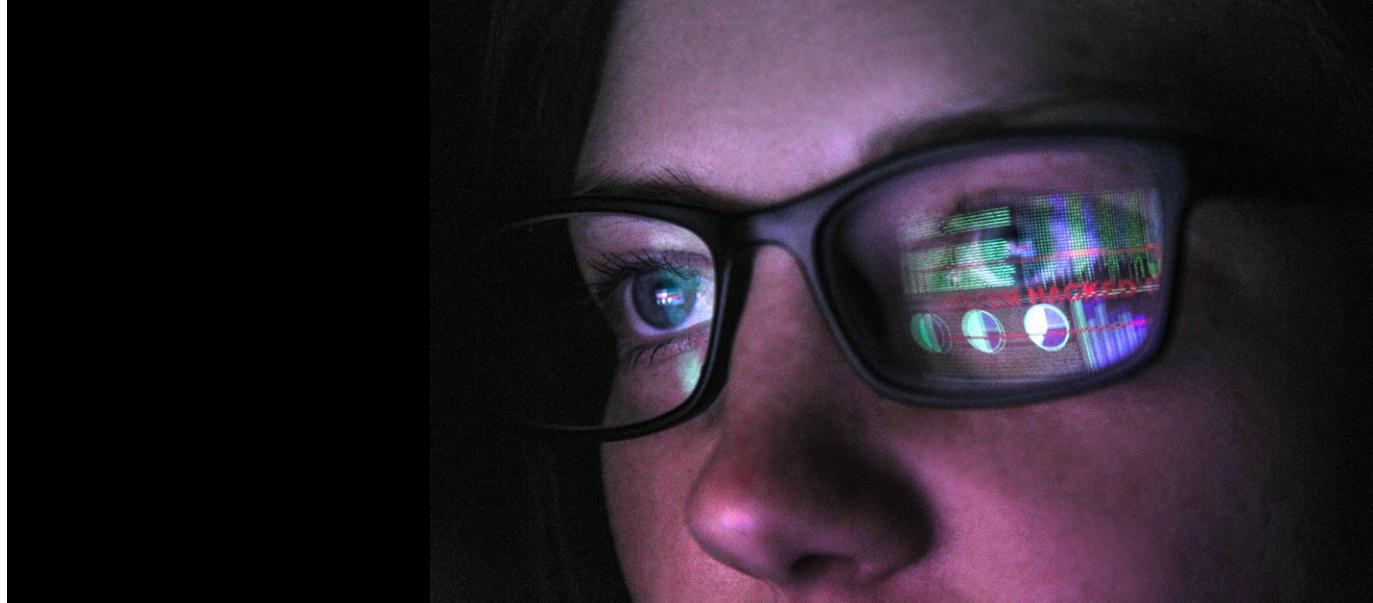
The starting point for this analysis is to consider the general treatment of investment income or losses under Canadian tax law, and then to determine how that treatment could apply in the context of investment fraud.

In a 2014 article, Joanne Magee<sup>9</sup> provided guidelines to the statutory framework and the case law that had been released up to that time, and worked through many of the challenges in trying to apply the rules. She started her article by summing up the "general rule" as follows:

...one-half of a taxpayer's loss from a bad investment will be an allowable capital loss (ACL) which is generally deductible only against taxable capital gains. If, however, the capital loss is from an investment in a debt or share of a small business corporation (SBC) one-half could be deductible as an allowable business investment loss (ABIL). Alternatively, the loss might be fully deductible as an expense or loss from a business or not deductible at all.<sup>10</sup>

These general rules may seem quite straightforward. However, perhaps because many of the applicable statutory provisions in the *Income Tax Act* (the Act) apply broadly (e.g., subsections 9(1), 39(1), 50(1); paragraphs 18(1)(a), 20(1)(p)) and many different types of fraud have been perpetrated, it can be quite difficult in practice to determine how these principles should apply.

To illustrate, there is a group of cases in which the Court considered the validity of certain losses, and allowed capital losses (*Kleinfelder, Simmonds and Johnston*),<sup>11</sup> or an allowable business investment loss (ABIL) (*Johnston*) in respect of the fraudulent investment.



However, there are also cases where the Court found that no capital investment was made and denied the loss claimed (e.g., *Garber or Vankerk*)<sup>12</sup>. In *Vankerk*, for example, the Court did not allow taxpayers who invested in fictitious partnerships, purporting to carry on the production of sound recordings, to deduct business losses and related business expenses, because the Court held that no business was in fact being carried on.

In other circumstances, the Court has denied a loss because the taxpayer failed to perform adequate due diligence. For example, in *Hammill*,<sup>13</sup> the taxpayer believed that he was investing in an opportunity related to a business of buying and selling gems. The CRA allowed him a deduction for the theft of his inventory, as a loss resulting from an adventure in the nature of trade,<sup>14</sup> but denied the deduction of other expenses under section 67 as "unreasonable." The Court agreed with the CRA that the expenses were unreasonable

and denied the deductions. In a statement that is often referred to, the Federal Court of Appeal (FCA) opined that a scheme that is fraudulent from beginning to end cannot be a source of income,<sup>15</sup> and consequently expenses purporting to be incurred in respect of such scheme are not reasonably deductible.

On the other hand, the Court in *Johnson*<sup>16</sup> found that even though an investment may have turned out to be a fraud, if the victim of the fraud's contractual rights were upheld, and they got what they bargained for (in this case, the taxpayer, Donna Johnson, received the promised returns), the fraud can be a source of income. In reaching this conclusion, the Court emphasized the highly factual nature of any such inquiry.<sup>17</sup>

In two more recent cases, the Court considered whether amounts received from fraudulent schemes should be included in income.

<sup>9</sup> Joanne E. Magee, "Tax Writeoffs for Investment losses: Lessons from Cases Involving Victims of Investment Fraud," Personal Tax Planning feature (2014), *Canadian Tax Journal* 221- 244.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Kleinfelder v MNR*, 91 DTC 913 (TCC); *Simmonds v The Queen*, 97 DTC 3260 (TCC); *Canada v Johnston*, 2001 FCA 122, affirming 2000 DTC 1864 (TCC).

<sup>12</sup> *Garber et al v The Queen*, 2014 TCC 1; *Vankerk v Canada*, 2006 FCA 96, affirming 2005 TCC 292.

<sup>13</sup> *Hammill v Canada*, 2005 FCA 252, affirming 2004 TCC 595.

<sup>14</sup> An adventure in the nature of trade has been defined as an isolated transaction when the taxpayer buys property with the intention of selling it at a profit and then flips it. See Magee op cit footnotes 61 and 62.

<sup>15</sup> *Hammill*, paragraph 28.

<sup>16</sup> *The Queen v Johnson*, 2012 FCA 253. Note that this case should be distinguished from *Canada v Johnston*, 2001 FCA 122, cited in footnote 11.

<sup>17</sup> *Johnson* at paragraph 47.



In *Roszko*,<sup>18</sup> the taxpayer was the victim of a Ponzi scheme. The taxpayer had sold the family farm in 2006 and sought to invest a portion of the proceeds in a reputable Alberta financial enterprise. The taxpayer then advanced funds to the enterprise totalling \$800,000. The taxpayer received \$156,000 in respect of the investment, which he reported as interest income on his T1 personal tax return for that year.

When the investment turned out to be a fraud, the taxpayer argued that the amount was actually received as a return of a loan principal and should not have been included in income. The Crown (on behalf of the CRA), in turn, argued that the terms of the contract were enforceable and that the receipts were the taxpayer's interest income. The Court found for the taxpayer, and concluded that the amount was a return of capital.

The Court considered *Hammill* and *Johnson*, drawing a distinction between earning income based on a fraudulent act or illegal activity (as in *Johnson*) versus a finding that the contract itself is a fraud (as in *Hammill*). The Court ruled in *Roszko* that the taxpayer's documents were unequivocal and that the investment company had not complied with its legal obligations under the contract. Accordingly, the Court found that the taxpayer did not earn any interest income.

In contrast, in *Mazo*,<sup>19</sup> the taxpayer participated in a multi-level marketing arrangement involving the buying and selling of goods and services, and was one of the fortunate few who was actually able to get returns under the scheme. The CRA reassessed the taxpayer on the basis that she had earned commission income on sales and purchased goods and services for personal use through her participation in the scheme.

The Court disagreed with the CRA's characterization, finding instead that it was clearly a scheme in which participants were not purchasing goods or services, but instead were buying a spot at the bottom of the pyramid. However, the Court concluded, as in *Johnson*, that the taxpayer got what she bargained for out of the scheme, and therefore should have included her receipts in income. Although the Crown (on behalf of the CRA) in this case was largely successful, the Court did allow the taxpayer to deduct additional business expenses in respect of that income.

Perhaps not surprisingly, the bottom line to be drawn from all of these cases is that whether a particular scheme will be considered a source of income must be determined by reference to the particular taxpayer and the particular facts and circumstances of the situation.

## The CRA technical interpretations

It is in the context of this developing jurisprudence that the CRA provided its general comments (which are generally the same in all of the documents listed above) on the tax treatment of income or losses from fraudulent investments.

### Income inclusion

To begin with, the CRA notes that income amounts that are paid to a taxpayer as a return on their investment, such as interest, must be included in the taxpayer's income in the year of receipt, citing paragraph 1.42 of *Income Tax Folio S3-F9-C1 Lottery Winnings, Miscellaneous Receipts and Income (and Losses) from Crime*. The CRA adds: "Where it is determined that no funds were actually invested on behalf of the taxpayer and amounts came from a different taxpayer's investment..., this does not change the nature of the transaction for the taxpayer." The justification for this position could be the previously mentioned cases, *Johnson* and *Mazo*, which held that income from a fraud, where the terms of the contract were met, was income from a source.

<sup>18</sup> *Roszko v The Queen*, 2014 TCC 59.

<sup>19</sup> *Mazo v The Queen*, 2016 TCC 232.

Interestingly, neither the CRA interpretations we are examining, nor the Folio mentioned above, refer to the *Roszko* case, and their position, as reflected therein, appears to be inconsistent with this decision. As mentioned above, in *Roszko*, the taxpayer received a portion of his investment back, treated it initially as income, but then successfully argued that it was a return of capital.

Instead, the CRA seems to bypass *Roszko* by suggesting that if the income was reported but not received or withdrawn by the taxpayer, it may be deducted under paragraph 20(1)(p) of the Act, stating the following:

There is no provision in the Act that would allow interest income previously received by a taxpayer (and included in income) to be removed from the taxpayer's income. However, in the case where investment income purportedly earned from a scheme was previously included in the taxpayer's income, but was not actually received or withdrawn by the taxpayer, the taxpayer may claim a deduction for a bad debt in accordance with paragraph 20(1)(p) of the Act in the year the debt is established to be bad.

This treatment aligns with what the Court found in the *Donne*<sup>20</sup> case, where the Court allowed a deduction under paragraph 20(1)(p). Interestingly, in that case, the taxpayer's accountant did not include the income on his T1 return but provided a letter to the CRA stating that the income was "never earned, payable or collectible." The Court held that the amount was to be included in income by virtue of the application of the Act's provisions, regardless of what had been recorded on the T1, and then allowed an offsetting deduction under paragraph 20(1)(p).

Although *Donne* was decided after *Roszko*, it does not address the earlier decision, and therefore it is not clear that it should override the Court's finding in the earlier case. Consequently, the CRA's suggestion that amounts cannot be "removed from a taxpayer's income" is arguably not correct at law, and taxpayers may still want to consider whether a *Roszko*-like argument could succeed in their circumstances (and particularly if the receipt is not in the nature of interest).

## Losses from fraud

The CRA generally states that losses from fraud can be on income or capital account and can be business investment losses (paragraph 39(1)(c) and *Income Tax Folio S3-F9-C1, Lottery Winnings, Miscellaneous Receipts, and Income (and Losses) from Crime*). Debts established to be bad debts can be written off under paragraph 50(1). This statement needs to be weighed against the cases mentioned above where the Courts have held in certain circumstances that an individual may have no capital loss at all, for instance if the victim did not acquire capital property.

For a full deduction against income, the loss must be from a source of income that is either business or property (subsection 9(2) of the Act). Generally, the Courts have allowed income deductions where there is an adventure in the nature of trade or there is a pre-existing business to which the loss is reasonably incidental. When an existing business has a loss that is incidental to the income-earning activities of the business, the CRA has said that it is normally deductible (*CRA Interpretation Bulletin IT-185R Losses from Theft, Defalcation, or Embezzlement*, paragraph 2), e.g., in *Agnew*,<sup>21</sup> the TCC allowed a partnership to take a deduction for funds misappropriated by the general partner apparently on the basis that a business was being carried on and that the loss was incidental to the business.

However, there may be other hurdles. For example, the tax authorities may challenge the loss using section 67, like in *Hammill*, as described above, in which the taxpayer was denied the deduction of his selling expenses because they were not reasonable. A similar conclusion was found in *Ruff*.<sup>22</sup> In this case, the taxpayer transferred almost \$400,000 apparently to help a wealthy overseas family recover US\$8.5 million from a security company in Côte d'Ivoire. The Court found that it was not reasonable for the taxpayer to have believed the story and denied a deduction.

## Capital loss

The CRA states that if a loss is incurred on the disposition of an investment that was being held on capital account, a taxpayer may be entitled to a capital loss pursuant to paragraph 39(1)(b) of the Act to the extent that the taxpayer is unable to recover the amount of their initial investment.

As pointed out above, however, in some circumstances a capital loss may not be available. In *Garber*, where the taxpayer invested in a yacht-chartering business, the Court, referring to *Hammill*) commented that the so-called business was "a fraudulent scheme from beginning to end throughout which the investors' contractual rights were not respected," and that, as a consequence, it could not give rise to a source of income. The Court examined the evidence and tax deductions for partnership business losses, related interest expense and professional fees.

Commentators [*Bernstein*<sup>23</sup> and *Magee*<sup>24</sup>] have pointed out that in this case even a capital loss would have been denied, because the Court found that the so-called partnerships were not partnerships at law. Therefore a partnership interest that would constitute capital property did not exist.

<sup>20</sup> *Donne v The Queen*, 2015 TCC 150.

<sup>21</sup> *Agnew et al. v The Queen*, 2002 DTC 2155 (TCC).

<sup>22</sup> *Ruff v The Queen*, 2012 TCC 105.

<sup>23</sup> Jack Bernstein, "The Double Edge of Fraud" (2009) 17:4 *Canadian Tax Highlights* 1-2.

<sup>24</sup> Magee, Op. cit.



## Business investment loss

Under this heading, the CRA's comments generally explain that an ABIL is one-half of a business investment loss determined under paragraph 39(1)(c) of the Act, which can be carried back three years and forward up to 10 years. The CRA further explains that generally if it is not deducted as a non-capital loss by the end of the carryforward period, it becomes a net capital loss at the end of the 10th year. Beyond that, the CRA does not really explain ABILs in detail in the technical interpretations, instead directing readers to go to subsection 248(1) of the Act or *Income Tax Folio S4-F8-C1, Business investment losses*, for further information.

However, the CRA does confirm that an ABIL for a tax year may be deducted from all sources of income from that year, which can include income from a fraudulent investment, though it points out that taxpayers may face difficulty in claiming ABILs where certain facts cannot be established. Practically speaking, since being able to prove facts is a key risk for taxpayers who have fallen victim to investment fraud, the availability of ABILs for tax relief will all come down to what kind of proof they can piece together, after their investment has gone sour.

## Debts established to be bad debts

The CRA then outlines the mechanism for electing under paragraph 50(1) to treat a debt as bad, if:

- ▶ It is not a personal use property
- ▶ It is established by the taxpayer to be a bad debt in the year.

The CRA points out that if the debt is not acquired for the purpose of gaining or producing income from a business or property, the loss may be denied. If the rules do apply, the CRA (following the Act) says that there will be a deemed disposition of the debt at the end of the year for proceeds equal to nil and a reacquisition of the debt immediately after at a cost equal to nil. This will result in the bad debt being treated as a capital loss with any future recovery of that debt being treated as a capital gain. Once again, however, the CRA points out that taxpayers must be able to establish that a debt has gone bad, and so it will all depend on what victims are able to prove.<sup>25</sup>

## Additional comments

The CRA wraps up the technical interpretations by providing helpful comments on the use of form T1-ADJ, *T1 Adjustment Request*, to claim other deductions, the treatment of recovered amounts if funds have been recovered by the taxpayer through a legal settlement or otherwise, and the taxpayer relief provisions, referring to *Information Circular ICO7-1R1, Taxpayer Relief Provisions*. For more information on the taxpayer relief provisions, see our publication [\*Managing Your Personal Taxes: a Canadian Perspective\*](#), Chapter 18, or contact your EY tax advisor.

## Conclusion

These CRA interpretations are certainly welcome. But they're not magic wands, and taxpayers may still need to do more work to come up with a strong filing position. The nature of the applicable jurisprudence means that there are no simple answers, but if we can draw any lessons from all of this, it is, as much as possible, to use caution when investing, insist on comprehensive documentation, keep good records – and always seek professional advice.

<sup>25</sup> There is no prescribed form for the election. The CRA has indicated that the election should be made via a signed letter attached to a tax return in Chapter 5 of the CRA Capital Gains Guide T-4037.

# One key to tax function success is Connected Tax

*Jon Dobell, EY Global Compliance and Reporting Leader Originally published in [EY Tax Insights](#)*



Organizations are connecting around their technology and data, with leading companies boosting investment in tax technology and data science talent.

The public debate over corporate taxation is often emotive, and newspaper readers might presume that corporate tax functions are not doing the right things, but for a majority of corporations that could not be further from the truth.

Corporate tax functions are performing better than ever at keeping organizations compliant globally, despite shrinking budgets and an increasingly complex legislative environment. The key to this success is "connecting," around a space that we have identified as "Connected Tax."

Organizations are connecting around their technology and data, with leading companies boosting investment in tax technology and data science talent with the goal of building a solid infrastructure of valuable data assets. Taken from the organization's many incompatible legacy systems, data is being scrutinized, cleansed, rearranged and combined to create a foundation for better performance, not only in the tax and finance functions but throughout the organization's broader business activities.

Tax functions have also been connecting with the finance function and with other stakeholders in the broader business whose combined experience can proactively drive better outcomes in the company's key business activities and position tax and finance as strategic boardroom business partners.

We see four principal areas where tax and finance executives can have this tangible, positive impact as part of Connected Tax.

## Cost reduction – tax savings through business processes

According to a recent EY survey, more than 90% of companies have active cost-reduction programs in place.

As finance, tax, legal and human resources functions are cutting costs increasingly often, we see an opportunity for the tax and finance functions to play a bigger role in several business processes that already have tax “events” embedded in them: corporate finance; sourcing and procurement; property acquisition, construction and management; and research, design and development.

In each of those areas, what enables tax and finance to play a more constructive role is the foundation of clean data from across the business, which facilitates enhanced data analytics, yielding the insights and efficiencies that can provide cost reduction.

## Post-deal services

Given the rapid pace of M&A activity in the market, the C-suite is naturally more interested in how tax affects any major acquisition or sale. We see an opportunity for tax and finance functions to be more embedded from the early days of considering a transaction through to successful post-implementation integration.

Post-deal knowledge sharing is critical, and detailed tax and finance knowledge acquired during the transaction helps to enable better strategies for Day One readiness and ongoing post-deal tax integration and planning.

Compliance is another post-deal challenge as the organization integrates systems and processes. Robust tax and finance participation will assure that regulatory registration and reporting obligations are met early, and that the tax function is truly connected to the organization's M&A agenda.

## Transformation

Business transformation dominates the C-suite agenda, both as a mandate for staying viable and as a way to capture the opportunities presented by industry convergence. Three key elements are:

- **Digital transformation** – “future-proofing” a company’s business so it will be fit for a digital world
- **Finance transformation** – improving the efficiency of a company’s tax and finance functions to lower costs and mitigate operational risk
- **HR transformation** – enabling a company’s talent model to keep pace with the connected economy

In all its aspects, true transformation involves the entire enterprise, and virtually every business decision has a tax implication, so the tax and finance functions must have a seat at the transformation table to help achieve long-lasting business impact. We are seeing this as another way that tax and finance functions are playing their part and connecting to the broader business agenda.

## Response to the forces of globalization

Tax and finance functions can help the organization stay ahead of the curve in managing the risks and identifying the opportunities that result from globalization. We see four themes arising:

- **Regulatory change.** Considering BEPS, Brexit, US tax reform and waves of indirect tax enactments, to name a few, recent years have seen dramatic change continue to impact corporate taxation. However, according to our same survey, 87% of organizations lack the resources to respond to new tax legislation.

▸ **Business tax transparency.** Government-imposed transparency measures such as country-by-country reporting (CbCR), the common reporting standard and SAF-T are forcing disclosure of much more information about business models. In addition, companies are sharing more information with business partners and even competitors under the banner of “co-opetition.” Our same survey, however, shows that 95% of organizations see greater tax risk, including reputational risk, when complying with such transparency initiatives.

▸ **Digital disruption.** Digitization has forced “traditional” businesses into the digital realm where they must compete with entirely digital companies as well as face a new generation of digitally savvy tax administrations. As a result, 47% of businesses believe that tax authorities are ahead of taxpayers in going digital.

▸ **Workforce change.** Our recent research with LinkedIn found that 38% of the world’s largest public companies had talent in 100 or more countries. With employees so far-flung, companies that need the right people located in the right places are trending away from large expatriate populations toward more short-term business travelers, which triggers major tax effects. Another critical trend is the increasing size of the contingent workforce.

Tax and finance functions that identify and prioritize the globalization trends with the highest impact on their companies are being seen as much more connected with their businesses overall.

## A connected solution

Leading companies with advanced tax and finance functions have shown that they can combine data from all parts of their business. As difficult as this is to achieve, it then sets them up to perform sophisticated, comprehensive data analytics that yield nimble but well-informed decisions, making them better connected to their business. That is the focus of Connected Tax.

# Publications and articles

## Tax Alerts - Canada

### Tax Alert 2018 No. 33 - TCC finds for the taxpayer in Cameco transfer pricing case†

On 26 September 2018, the Tax Court of Canada (TCC) rendered its decision in Cameco Corporation v the Queen. The TCC found for the taxpayer, concluding that none of the transactions, arrangements or events in issue was a sham, and reversed the Minister's transfer pricing adjustments for each of the taxation years in question.

### Tax Alert 2018 No. 34 - USMCA to replace NAFTA

On 1 October 2018, US President Donald Trump announced an agreement with Canada and Mexico to replace the existing North American Free Trade Agreement 1994 (NAFTA) between the US, Mexico and Canada with a new agreement to be called the United States Mexico Canada Agreement (USMCA). While not effective immediately (NAFTA will live into 2019 or even longer depending on the US legislative and implementation process), it is a new agreement and there are some significant changes.

### Tax Alert 2018 No. 35 - Steel safeguard surtax remission of surtaxes on certain US origin goods

On 11 October 2018, the Department of Finance announced a new global safeguard surtax with exceptions for certain free-trade partners, lesser-developed countries entitled to the general preferential tariff and the United States. The measure is intended to prevent diversion of foreign steel products into Canada and also to assist in negotiations with the US regarding removal of the US special tariffs on steel and aluminum. At the same time, Finance announced a product-specific Remission Order made 10 October 2018 for relief in specific circumstances from the surtax on steel and aluminum products (and certain pleasure vessels) subject to the retaliatory surtax measures on products originating in the US.

### Tax Alert 2018 No. 36 - BC introduces EHT

On 16 October 2018, Bill 44, Budget Measures Implementation (Employer Health Tax) Act, 2018 received first reading in the British Columbia legislative assembly. If enacted, Bill 44 will introduce an employer health tax (EHT) or "payroll" tax on employers' payrolls commencing in the 2019 calendar year.

### Tax Alert 2018 No. 37 - BC introduces SVTA

On 16 October 2018, Bill 45, Budget Measures Implementation (Speculation and Vacancy Tax) Act, 2018 also received first reading in the British Columbia legislative assembly. If enacted, Bill 45 would impose an annual speculation and vacancy tax (SVT), payable by owners of residential property in designated taxable regions of British Columbia.

### Tax Alert 2018 No. 38 - Finance tables NWMM and adjusts T1134 deadline

On 25 October 2018, federal Finance Minister Bill Morneau tabled a notice of ways and means motion (NWMM) that includes most of the draft legislative proposals released on 27 July 2018 relating to outstanding measures announced in the 2018 federal budget, a revised version of the amendments concerning foreign spinoffs and the shareholder benefit rules, and some indirect tax measures. The NWMM also includes various other previously announced income tax and GST/HST legislative proposals. It takes into account comments received since the previous release of the draft legislative proposals and, most notably, addresses concerns raised over the 2018 federal budget proposal to shorten the filing deadline for information returns in respect of a taxpayer's foreign affiliates (Form T1134, *Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*).



# Publications and articles

## Publications and articles

### EY's Global Capital Confidence Barometer

The 18th edition of EY's *Global Capital Confidence Barometer* shows 78% of Canadian companies intend to pursue M&A in the next 12 months, an all-time high in survey history.

### EY's Worldwide Personal Tax and Immigration Guide 2017-18

This guide summarizes personal tax systems and immigration rules in more than 160 jurisdictions, including Australia, Brazil, Canada, France, Germany, Mexico, the Netherlands, the Russian Federation, the UK and the US.

### EY's Worldwide Capital and Fixed Assets Guide 2018

The *Worldwide Capital and Fixed Assets Guide* helps our clients navigate the rules relating to fixed assets and depreciation. It summarizes the complex rules relating to tax relief on capital expenditures in 29 jurisdictions and territories.

### EY's Worldwide Estate and Inheritance Tax Guide 2018

EY's Worldwide Estate and Inheritance Tax Guide summarizes the estate tax planning systems and describes wealth transfer planning considerations in 39 jurisdictions around the world, including Australia, Canada, China, France, Germany, Italy, the Netherlands, the UK and the US.

### Worldwide Corporate Tax Guide 2018

Governments worldwide continue to reform their tax codes at a historically rapid rate. Chapter by chapter, from Afghanistan to Zimbabwe, this EY guide summarizes corporate tax systems in 166 jurisdictions.

### Worldwide VAT, GST and Sales Tax Guide 2018

This guide summarizes the value-added tax (VAT), goods and services tax (GST) and sales tax systems in 122 jurisdictions, including the European Union.

### Worldwide R&D Incentives Reference Guide 2018

The pace at which countries are reforming their R&D incentives regimes is unprecedented. This EY guide summarizes key R&D incentives in 44 countries, and provides an overview of the European Union's Horizon 2020 program.

### 2017-18 Worldwide Transfer Pricing Reference Guide

The proliferation of transfer pricing rules and regulations around the world, and the huge increase in focus on the subject by the world's tax authorities, require practitioners to have knowledge of a complex web of country tax laws, regulations, rulings, methods and requirements. This guide summarizes the transfer pricing rules and regulations adopted by 119 countries and territories.

### Board Matters Quarterly

The September 2018 issue of *Board Matters Quarterly* (BMQ) includes four articles from the EY Center for Board Matters. Topics include: Crossing the digital divide, Audit committee reporting to shareholders in 2018, 2018 proxy season review, and a fresh look at board committees.

### EY Trade Watch

This quarterly publication outlines key legislative and administrative developments for customs and trade around the world. Highlights of the September edition include: NAFTA update: US and Mexico reach an agreement in principle, inclusion of Canada remains uncertain; Duty relief, duty drawback and remission available for Canadian surtaxes on certain US originating goods; Canada updates trade compliance verification list; Mexico takes retaliatory measures against US imposition of steel and aluminum tariffs; US issues new steel and aluminum proclamations outlining potential relief opportunities for US importers; US-China trade dispute escalates with punitive tariffs implemented on a total of US\$60 billion of trade between the two nations; UK Government's guidance on preparing for "no deal" on Brexit outlines indirect tax implications, among other topics.

# Publications and articles

## Websites

### EY Law LLP

Our national team of highly qualified lawyers and professionals offers comprehensive tax law services, business immigration services and business law services. Serving you across borders, our sector-focused, multidisciplinary approach means we offer integrated and comprehensive advice you can trust. Visit [eylaw.ca](http://eylaw.ca).

### Focus on private business

Because we believe in the power of private mid-market companies, we invest in people, knowledge and services to help you address the unique challenges and opportunities you face in the private mid-market space. See our comprehensive private mid-market [webcast series](#).

## CPA Canada Store



### EY's Guide to Scientific Research and Experimental Development, 3rd Edition

Editors: Susan Bishop, Kevin Eck, Elizabeth Pringle, Krista Robinson

This guide has been prepared to assist Canadian tax professionals in understanding the scientific research and experimental development (SR&ED) rules in Canada.

### Online tax calculators and rates

Frequently referred to by financial planning columnists, our mobile-friendly calculators on [ey.com/ca](http://ey.com/ca) let you compare the combined federal and provincial 2017 and 2018 personal tax bills in each province and territory. The site also includes an RRSP savings calculator and personal tax rates and credits for all income levels. Our corporate tax-planning tools include federal and provincial tax rates for small-business rate income, manufacturing and processing rate income, general rate income and investment income.

### Tax Insights for business leaders

Tax Insights provides deep insights on the most pressing tax and business issues. You can read it online and find additional content, multimedia features, tax publications and other EY tax news from around the world.

### The Worldwide Indirect Tax Developments Map

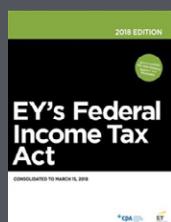
Updated monthly, our interactive map highlights where and when changes in VAT, Global trade and excise duties are happening around the world. The map can be filtered by tax type, country and topic (e.g. VAT rate changes, compliance obligations and digital tax).



### EY's Complete Guide to GST/HST, 2018 (26th Edition)

Editors: Dalton Albrecht, Jean-Hugues Chabot, Sania Ilahi, David Douglas Robertson

Canada's leading guide on GST/HST, including GST/HST commentary and legislation, as well as a GST-QST comparison. Written in plain language by a team of EY indirect tax professionals, the guide is consolidated to 15 July 2018 and updated to reflect the latest changes to legislation and CRA policy.



### EY's Federal Income Tax Act, 2018 Edition

Editors: Alycia Calvert, Warren Pashkowich and Murray Pearson

Complete coverage of Canada's Income Tax Act and Regulations. Included with this edition: interactive online features and purpose notes for selected provisions.

Purchase of a print book includes access to an online updated and searchable copy of the federal Income Tax Act as well as the PDF eBook. This edition contains amendments and proposals from the 27 February 2018 federal budget tax measures, Bill C-63 (SC 2017, c. 33), Budget Implementation Act, 2017, No. 2, the 13 December 2017 amendments to the Income Tax Act and Regulations (income sprinkling), and the 24 October 2017 notice of ways and means motion.

To subscribe to *TaxMatters@EY* and other email alerts, visit [ey.com/ca/EmailAlerts](http://ey.com/ca/EmailAlerts).

For more information on EY's tax services, visit us at [ey.com/ca/Tax](http://ey.com/ca/Tax).

For questions or comments about this newsletter, email [Tax.Matters@ca.ey.com](mailto:Tax.Matters@ca.ey.com).

And follow us on Twitter [@EYCanada](https://twitter.com/EYCanada).

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit [ey.com/ca](http://ey.com/ca).

© 2018 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

2937393

ED None

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

[ey.com/ca](http://ey.com/ca)