Tax Topics®

November 14, 2013
Number 2175

Wolters Kluwer
CCH

NOT QUITE CHICKEN SOUP — PART II: ARE POWERS TO ADD AND REMOVE BENEFICIARIES SAFE FOR CANADIAN FAMILY TRUST PRECEDENTS?

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This is the second part of a two-part article that discusses the inclusion and use of powers to add and remove beneficiaries ("PARBs") in drafting, planning, and establishing family trusts. Part I was published in *Tax Topics* No. 2174 on November 7, 2013.

Introduction

PARBs are powerful tools; while some tax and trust practitioners are quite comfortable with using PARBs in Canadian discretionary family trusts ("Family Trusts"), these provisions have always made me uncomfortable.

In this two-part series I have been exploring the non-tax and tax issues associated with PARBs and although my research has eased some of my concerns, it has also led me to the conclusion that PARBs are not riskless "chicken soup" provisions. In particular, Part I of the series reviewed the more conventional non-tax and tax issues associated with PARBs, and Part II reviews some other potential tax issues that PARBs may pose for unsuspecting tax practitioners.

Tax Matters — Are There Other Issues?

As I thought more about PARBs, I began to wonder if the mere inclusion of such powers could give rise to other tax issues. This led me to look at the definition of "beneficially interested" in subsection 248(25) of the *Income Tax Act* (the "Act"),[1] some of the more relevant portions of which are reproduced below.

> For the purposes of this Act,
>
> (*a*) a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any person or partnership) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more trusts or partnerships;
>
> (*b*) except for the purpose of this paragraph, a particular person or partnership is deemed to be beneficially interested in a particular trust at a

particular time where

(i) the particular person or partnership is not beneficially interested in the particular trust at the particular time,

(ii) because of the terms or conditions of the particular trust or any arrangement in respect of the particular trust at the particular time, the particular person or partnership might, because of the exercise of any discretion by any person or partnership, become beneficially interested in the particular trust at the particular time or at a later time, and

(iii) at or before the particular time, either

(A) the particular trust has acquired property, directly or indirectly in any manner whatever, from

(I) the particular person or partnership,

(II) another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length,

(III) a person or partnership with whom the other person referred to in subclause (II) does not deal at arm's length, . . .

Does the inclusion of a PARB mean that pursuant to paragraph (*a*) of this definition everyone in the world would become beneficially interested in the trust? I would hope not as I'm not sure that, say, the Prime Minister of Malaysia[2] could be seen to have any "right . . . as a beneficiary under a trust" just because of the inclusion of such a clause. However, bad facts often lead to bad decisions,[3] so I worry that the case that tests an issue will end up being the wrong one. Still, I would like to think a reasonable panel of judges and CRA officials would place sensible limits on paragraph (*a*) of the "beneficially interested" definition.

However, I think that the same reasonable panel of judges would find that where a trust includes a PARB, subclauses 248(25)(*b*)(iii)(A)(I)–(III) would likely result in anyone not at arm's length with the settlor/freezor being found to be beneficially interested in a trust with this type of power. Assuming that this is the case, then one needs to consider what provisions in the Act are impacted by a person's being beneficially interested in a trust (at least under paragraph (*b*)).

In that regard, because the term "beneficiary" is specifically defined in subsection 251.1(3) of the affiliated person rules to include persons beneficially interested in a trust, a PARB could result in a broader group of affiliated persons with a trust than one might otherwise have anticipated. Although it is hoped that in practice the application of the affiliated person rules between a trust and its "beneficiaries" would be rare, it is a risk that should be kept in mind.[4]

Fortunately, unless paragraph 248(25)(*a*) is applicable, a PARB should generally not overly expand the classes of persons who would be considered to be non-arm's length with a trust under paragraph 251(1)(*b*). This is because the determination of whether a taxpayer and a person beneficially interested in a trust are non-arm's length is to be made without taking into account subclauses 248(25)(*b*)(iii)(A)(II)–(IV).[5] Consequently, it is hoped that it would be rare for other provisions in the Act that rely on non-arm's length relationships to be impacted by a trust that includes a PARB.

However, if the beneficially interested concept is applicable for purposes of subsection 55(2), then it appears that PARBs in trusts could cause those trusts to be unable to avail themselves of the exception to that provision, which might otherwise be available under paragraph 55(3)(*a*). The reason for this is that only trusts that meet the restricted related persons provisions in paragraph 55(5)(*e*)[6] qualify for this exception. In this regard, although the CRA has indicated that "the concept of 'person beneficially interested' is irrelevant for the purposes of subparagraph 55(5)(*e*)(ii)", it also indicated that it "feel[s] that the right described in subparagraph 55(5)(*e*)(ii) I.T.A. and paragraph 248(25)(*a*) I.T.A. are fairly similar".[7]

It is unclear whether the CRA's views regarding subparagraph 55(5)(*e*)(ii) would also be applicable to situations caught by paragraph 248(25)(*b*). Nevertheless, given the CRA's conclusion, it would appear that the inclusion of a PARB might well be problematic for the purposes of subsection 55(2).

Until recently, I think that one could have stopped his or her review of the Act by merely reviewing the beneficially interested related provisions in the Act. For example, the CRA has previously provided rulings confirming that a person who was merely beneficially interested in a trust would not be subject to the association rules in section 256 if he or she was not a beneficiary of the trust.[8] Unfortunately, due to the *Propep* decision, to be cautious, the analysis should also consider the provisions in the Act that rely on a person being a "beneficiary" under a trust.[9]

For those of you who don't recall this odd decision of the FCA,[10] the facts involved a trust deed that was designed so that a specific individual would only be a beneficiary under the trust if the trustees exercised their discretion to make him a beneficiary, but the trustees had not exercised this discretion. Nonetheless, the Court found that the individual, a minor, was not just beneficially interested in the trust but was also a beneficiary of the trust. The result of the Court's decision was that the association rules in section 256 resulted in the corporation controlled by the trust and a corporation owned by the individual's father both being found to be associated corporations. Although one would hope that the application of *Propep* would be limited, the existence of the decision may make reliance on the comments made by the CRA prior to *Propep* risky.

Conclusion — Chicken Soup?

There is no question that in appropriate circumstances the inclusion of PARBs in Family Trusts may be beneficial and that for certain well-informed clients these benefits may outweigh any risks in doing so.

However, I don't think that these clauses are like "chicken soup". My concern is that, over time, PARBs will find their way into standard terms in Family Trust precedents (similar to what has transpired in the off-shore trust world), and that for the non-tax and the tax reasons described in this article they could result in real "hurt". Moreover, because modern Family Trusts can often be drafted with corporate, trust, and bail-out[11] beneficiaries, it appears that they can usually be drafted to provide all of the flexibility one would hopefully ever need.[12]

The author wishes to thank Elie Roth of Davies Ward Phillips & Vineberg as well as a number of other tax and trust specialists who provided comments on earlier versions of this article. Any errors or omissions are the author's sole responsibility.

Notes:

[1] All statutory references are to the Act.

[2] *Zoolander*, Dir. Ben Stiller, 2001.

[3] See *Propep Inc. v. R.*, 2009 DTC 5170 (discussed below).

[4] Some other provisions that employ the "beneficially interested" phrase include: paragraph (*c*.1) of the definition of "principal residence" in section 54, which requires that everyone beneficially interested in a trust be listed where the principal residence is claimed by a trust; and subsections 191(2) and (3), which deal with the "substantial interest" exception in the context of Part VI.1 taxes.

[5] Subclause 248(25)(*b*)(iii)(A)(IV) deals with controlled foreign affiliates.

[6] Generally, trusts where the only beneficiaries are the lineal descendants of an individual and/or registered charities, which is quite typical in many traditional Family Trust situations.

[7] See CRA Document No. 2004-0086961C6, October 8, 2004.

[8] See CRA Document No. 2008-0285041C6, October 10, 2008.

[9] Although the "beneficiary" definition is used regularly throughout the Act, in this article comments will be limited to the application of this definition in connection with the association rules.

[10] *Propep Inc. v. R.*, 2009 DTC 5170. See Jack Bernstein, "Association through a Trust: When Is A Person a Beneficiary?", *Tax Profile* No. 3 (March 2010).

[11] Usually the freezor in a Family Trust used for an estate freeze.

[12] Different considerations might apply to older trusts that don't have some or all of these types of provisions — but such trusts likely wouldn't have had powers to add or delete beneficiaries either.

CRA ANNOUNCES MAXIMUM PENSIONABLE EARNINGS FOR 2014

On November 1, 2013, the Canada Revenue Agency announced that the 2014 Canada Pension Plan ("CPP") maximum pensionable earnings ceiling will be $52,500 ($51,100 in 2013). As a result, for 2014 the maximum self-employed contribution will be $4,851 ($4,712.40 in 2013), and the 2014 maximum employer and employee CPP contributions will be $2,425.50 each ($2,356.20 each in 2013). The basic $3,500 CPP exemption amount, the 4.95% employee and employer contribution rates, and the self-employed contribution rate of 9.9% all remain unchanged for 2014.

2014 EMPLOYMENT INSURANCE PREMIUM RATE

As stated in the *Canada Gazette* Part I, Vol. 147, No. 44, the Employment Insurance premium rate ("EI rate") for 2014 is $1.88 per $100 of insurable earnings. For residents of Quebec, the 2014 EI rate is $1.53 per $100 of insurable earnings.

SUBSECTION 107(2) DISTRIBUTION

The Canada Revenue Agency ("CRA") was asked about the application of subsection 107(2) to a hypothetical situation where property is distributed by a trust to a beneficiary and the distribution serves as repayment of a debt owing by the trust to the beneficiary and as partial satisfaction of the beneficiary's capital interest in the trust. Subsection 107(2) provides a series of rules that apply when a personal trust or a prescribed trust distributes a property to a beneficiary under the trust in satisfaction of part or all of the beneficiary's capital interest in the trust. The property of the trust is rolled over to the beneficiary at the trust's cost amount of the property. As a result, any accrued gain or loss on the property is deferred and may be recognized by the beneficiary on a subsequent disposition of the property. The rules in paragraph 107(1)(*a*), in conjunction with paragraph 107(2)(*c*), provide that disposition of the beneficiary's capital interest that occurs when property is distributed by the trust will generally not give rise to a capital gain or loss (although a loss can occur in certain circumstances).

In the situation described, a trust will distribute real property to a beneficiary. The property has been acquired by the trust over several years, in part with *bona fide* loans from the beneficiary, and the property has appreciated significantly in that time. The CRA used the following numerical example to illustrate its response. The trust transfers property with a cost amount of $75 and fair market value ("FMV") of $120 to the beneficiary in order to settle a debt of $15 and to satisfy the beneficiary's capital interest in the trust. Since $15 of the FMV of the property is used to repay the debt, $105 is the FMV of the property used to satisfy the beneficiary's capital interest. Under paragraph 107(2)(*a*), that portion is deemed to have been disposed of by the trust for its cost amount of $65.63 (105/120 × 75). If the beneficiary later sells the property for its FMV of $120, the total gain would be $45, which is calculated in two parts. One part is the gain on the portion used to satisfy the beneficiary's capital interest, which is $39.37 (120 – (65.63 + 15). The other part is the gain on the portion of the property that was used to repay the debt, which is $5.63 (15 – (15/120 × 75)). In this example, the fair market value of the debt is equal to its face value. The CRA noted that if the debt is settled for less than its face value, section 80 regarding debt forgiveness could apply.

— *External Technical Interpretation, Financial Industries and Trusts Division, July 2, 2013, Document No. 2013-0488061E5*

UNION-PAID PENSION CONTRIBUTIONS

In the situation described, in order for employees to buyback their pensionable service relating to a period while on strike, the employer initially paid the premiums for both the employee and employer portions of the registered pension plan ("RPP") contributions. The union reimbursed the employer for both portions of the RPP contributions. The employee is responsible for both the employer and employee contributions if he or she elects to buyback pensionable service related to a strike. The Canada Revenue Agency ("CRA") was asked if the employees had to include in income the amounts that the union paid on behalf of its members for the RPP contributions.

In *Wally Fries v. The Queen*, 90 DTC 6662, the Supreme Court of Canada held that strike pay received by a union member was not income from a source as set out in section 3 of the *Income Tax Act* (the "Act") and so was not taxable. The CRA stated that in the situation described, it considers that the payments by the union for the employee and employer portions of the RPP contributions would not be income from a source and thus would not be taxable. If the employer had a legal obligation to make the contribution, the reimbursement still would not be taxable to the employee because the CRA considers that the union reimbursement would be treated as if the employer had made the contribution directly. As well, under subparagraph 6(1)(*a*)(i), employer RPP contributions are not included in an employee's income. The CRA also commented that under subsection 8(5), an employee could be denied a deduction for union dues relating to the payment of the RPP contributions. Union dues are deductible under subparagraph 8(1)(*i*)(iv), but the deduction is denied under subsection 8(5) if the dues are levied for a purpose other than that relating to the ordinary operating expenses of the union. Therefore, if the payment of the RPP contributions is not part of the union's ordinary operating expenses and is significant, subsection 8(5) may apply to the deduction of the employee's dues.

See also CRA Document No. 2012-0447371E5, "Payments Made by a Union" (March 4, 2013).

— *External Technical Interpretation, Business and Employment Division, May 16, 2013, Document No. 2013-0476281E5*

RECENT CASES

Losses from partnership established to finance development of taxpayer's daughter into professional tennis player were personal in nature and non-deductible

The taxpayer formed a limited partnership called Tennis Mania LP through which he raised funds and paid for expenses in relation to the development of his daughter, who was a promising tennis player. Investors would receive a return on investment once the taxpayer's daughter turned pro. The taxpayer would funnel the expenses incurred for his daughter through the partnership and claim a deduction in his income tax returns. The Minister disallowed the deductions on the basis that the expenses were personal in nature and, additionally, there were no partnership profits for which to offset expenses. Moreover, the funds provided were in the nature of a loan and not toward a business venture.

The taxpayer's appeal was dismissed. The taxpayer was not involved in the venture for purposes of earning profit but rather as a personal matter to develop his daughter as a professional tennis player. He lacked the intent and purpose in forming a proper partnership and did not operate the entity in a sufficient commercial manner.

¶48,552, *Bouchard*, 2013 DTC 1203

Minister's calculation of taxpayer's adjusted taxable income for AMT purposes affirmed

The taxpayer held several rental properties and his accountant used a complex computerized program to prepare his 2009 tax return. For 2008, the taxpayer had sustained a rental loss of $469,975, an extraordinary loss of $900,000, and an interest expense of $1,073,792. For 2009, his losses other than capital losses from other years amounted to $338,300. Using the computerized program, the taxpayer's accountant did not include this $338,300 in the calculation of the taxpayer's "adjusted taxable income" for alternative minimum tax purposes for 2009. His reasoning was that the $338,300, which arose from the loss suffered in 2008, was not attributable to interest expenses, since, for the taxpayer's other years from 2006 to 2010, there was no rental loss, despite the existence of interest expenses that were more or less comparable. In assessing the taxpayer for 2009, the Minister took the position that the $338,300 should have been included in the taxpayer's adjusted taxable income for 2009. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The provisions of the *Income Tax Act* prevailed over the results reached by the taxpayer's accountant using a computerized program. The $338,300 loss for 2009 was actually sustained in 2008 and would not have occurred without an interest deduction for 2008. As a result, through the combined operation of paragraphs 127.52(1)(*b*) and (*i*), the $338,300 was required to be included in the calculation of the taxpayer's adjusted taxable income for 2009 as the Minister had contended. The Minister's assessment was affirmed accordingly.

¶48,553, *Gélinas*, 2013 DTC 1204

Minister's net worth assessments reduced and penalties for gross negligence deleted

The taxpayers each reported income of $19,160 and $14,216 for 2007 and 2008, respectively. Using the net worth method, the Minister added to their reported income for 2007 and 2008 $15,790 and $25,651, respectively, and imposed penalties for gross negligence. On their appeal to the Tax Court of Canada, the taxpayers argued that the Minister erred in: (a) failing to take into account amounts held in their safety box and amounts of salary they earned; (b) adding to their long-term assets amounts they did not own; and (c) erroneously calculating their personal expenses.

The taxpayers' appeals were allowed in part. In net worth appeals, the onus clearly falls on the taxpayer to disprove the accuracy of the Minister's assessments. That said, the Minister's calculation of the taxpayers' personal expenses should be reduced by some amounts and adjustments should be made of the taxpayers' short-term assets. These adjustments in the Minister's calculations reduced the discrepancy between the net worth calculations and the income amounts reported by the taxpayers to relatively small amounts, so that the penalties became inappropriate and should have been deleted. The Minister was ordered to reassess accordingly.

¶48,554, *Hedzic*, 2013 DTC 1205

Municipality denied intervenor status in taxpayer's appeal to Tax Court

The Minister disallowed the deduction of a charitable donation tax credit the taxpayer claimed relating to a $2 million gift he made to a municipality (the "Gift") and imposed penalties for gross negligence under subsection 163(2). In addition to appealing to the Tax Court of Canada, the taxpayer instituted proceedings in the Quebec Superior Court ("QSC") seeking an order revoking the Gift, alleging in part that the municipality had organized a financial scheme that was highly prejudicial to him. The municipality applied under section 28 of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") to become an intervenor in the taxpayer's appeal to the Tax Court.

The municipality's application was denied. The municipality did not have an "interest" in the outcome of the Tax Court proceedings within the meaning of paragraph 28(1)(*a*) of the Rules merely because those proceedings might jeopardize its reputation. The municipality could defend its reputation in the QSC proceedings. In addition, the outcome of the Tax Court proceedings could not "prejudice" the municipality within the meaning of paragraph 28(1)(*b*) of the Rules merely because the Tax Court's findings of fact could constitute *chose jugée* (i.e., the equivalent of *res judicata)* in the QSC proceedings. There could be no *chose jugée* owing to the fact that the municipality would not be a party to the Tax Court proceedings, but merely an intervenor. Nor was there any question of law or mixed question of law and fact common to both the taxpayer and the municipality in the Tax Court proceedings to justify granting the municipality intervenor status in the proceedings under paragraph 28(1)(*c*) of the Rules.

¶48,555, *Kérouac*, 2013 DTC 1206

Taxpayer denied disability tax credit because he did not have condition certified in prescribed form

The taxpayer suffered from serious medical conditions. In 2009 and 2010, he reported gross non-refundable amounts of $7,196 and $7,239, respectively, for disability tax credits ("DTCs"). He argued that he suffered from ailments that limited his basic activities of daily living, was on disability support, and other factors that greatly impaired his regular function. The taxpayer completed a T2201 form but a follow-up call to his family physician by the Canada Revenue Agency determined that he was able to walk without taking an inordinate amount of time and was able to perform mental functions without significant restriction. The Minister disallowed the DTC on the basis that he did not have his condition certified in the prescribed form under subsection 118.3(1) and section 118.4.

The taxpayer's appeal was dismissed. The taxpayer did not have his condition certified in the prescribed form during the relevant period to meet the requirements of the legislative provisions. He could not demonstrate that his condition was severe and prolonged and had the effects described in subsection 118.4(1). Accordingly, he was not eligible for the DTCs.

¶48,556, *Nancarrow*, 2013 DTC 1207

Extension of time request beyond statutory limitation period

The corporate taxpayer brought a motion for an order to extend the time to file a notice of objection for 2002 to 2005. The taxpayer had filed amended tax returns for the relevant years in respect of capital cost allowances ("CCAs"), where it erroneously claimed its pipelines as a Class 1 asset instead of a Class 6 asset with a difference in CCAs of 6% between the classes. The Minister disallowed the amendment by letter dated February 1, 2012. Further, it advised the taxpayer that the 2002 return was a nil assessment and that its notice of objection for the relevant years was late. An extension of time application was also denied by the Minister as it was not filed within one year of the assessment date. The taxpayer argued that the letter of February 1, 2012 was a reassessment and was therefore still within the time limit to file the objection. Moreover, the taxpayer argued that Canada Revenue Agency ("CRA") policy is to treat the amended returns as *de facto* waivers, which would have kept open the statutory limit period.

The taxpayer's application was dismissed. CRA policy does not bind the court and, further, a reassessment does not necessarily follow an amended return. Moreover, the February 1, 2012 letter was not a reassessment letter, as it dealt with 2006 to 2010. Even if that letter was a reassessment, the Minister was statute-barred from granting an extension of time for those years.

¶48,557, *Newfoundland Transshipment Ltd.*, 2013 DTC 1208

Fees paid for consultation and preparation of disability tax credit claims not deductible because not related to objections or appeals

The taxpayer's claims for the disability tax credit and supplemental personal credit with respect to her son for 2000 to 2009 were allowed. She was appealing the denial of a deduction for the fees she paid for consultation and preparation of the claims. The basis for the denial was that the fees did not relate to an objection or appeal with respect to an income tax assessment. The taxpayer argued that unusual circumstances justified the deduction, arguing that the Canada Revenue Agency had allowed deductions for other taxpayers and that the disability tax provisions were complex.

The appeal was dismissed. For the taxpayer to be able to claim a deduction, the fees paid must relate to the preparation, institution, or prosecution of an objection or appeal with respect to a federal or provincial income tax assessment. The taxpayer's claim for disability tax relief was made by way of an application to adjust her tax return, which is a different procedure from the objection or appeal process. The Court has to apply the legislation and cannot extend the deduction to other types of fees. In determining whether deductions are permissible, the Court cannot look at arguments based on fairness, nor can it grant relief because a similar deduction was given to other taxpayers. As the fees paid by the taxpayer did not relate to objections or appeals, they were not deductible.

¶48,558, *Ridout*, 2013 DTC 1209

Legal expenses incurred by taxpayer in contested proceedings respecting family business not deductible

The deceased taxpayer inherited the shares of the corporation being used by his father to operate the family-run insurance business (the "Business"). During the taxpayer's lifetime, he incorporated HWH, GMH, and ASH to operate various segments of the Business, but only held shares in GMH. However, his four children, including M, held shares in varying proportions in each of those corporations. In a letter from April 17, 2003, addressed to GMH and ASH, M indicated that, on six months' notice, certain business relationships between HWH on the one hand, and GMH and ASH on the other hand, were being terminated owing to dissension among the various family members. The taxpayer and two of his children then instituted unsuccessful proceedings in the Quebec Superior Court and the Quebec Court of Appeal (the "Proceedings") against M, his wife, and one of his sisters for damages and for declarations, in part, that: (a) M's actions had violated the overall family agreement under which the taxpayer was to remain the sole and only *de facto* controlling shareholder of all the corporations involved in the Business, despite the identity of the shareholders actually shown in the shareholders' records; (b) this effectively deprived the taxpayer of his ability to continue to earn employment income and humiliated him; and (c) M's activities were legally unenforceable. In assessing the taxpayer for 2007, the Minister disallowed the deduction of the legal expenses he incurred in the Proceedings. The taxpayer's estate appealed to the Tax Court of Canada.

The estate's appeal was dismissed. The legal expenses in issue were not deductible under paragraph 8(1)(*b*) as expenditures made to collect or to attempt to collect employment income owing to the taxpayer. In addition, the cases cited by the taxpayer dealing with the deductibility under paragraph 18(1)(*a*) of expenses laid out to earn income from business or property were of little assistance. The Minister's assessment was affirmed accordingly.

¶48,559, *Hollinger*, 2013 DTC 1210

Fees taxpayer received from corporations doing business on- and off-reserve not exempt from tax as property of an Indian situated on-reserve

The taxpayer, a registered Indian residing off-reserve, was the sole shareholder and director of two corporations (the "Corporations"), which sold office furniture principally in the Gatineau region near Ottawa. The Corporations, whose head offices were located on a reserve, also operated one store on the reserve in a building owned by the taxpayer. In assessing the taxpayer for 2001 to 2003, the Minister refused to exempt from his income, as property situated on an Indian reserve under section 87 of the *Indian Act*, management fees he received from the Corporations (the "Fees"). The Minister included these Fees in the taxpayer's income as shareholder benefits and also imposed late-filing penalties for 2001 and 2002. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. In *Bastien Estate v. The Queen* (2011 DTC 5118), the Supreme Court reiterated the need, in conducting a property *situs* analysis under section 87 of the *Indian Act*, to apply the "connecting factors" test set out in *Williams v. The Queen* (92 DTC 6320). The connecting factors most pertinent to the Fees in this case were the place where the Fees were generated, the place where the taxpayer performed services for the Corporations (bearing in mind that the Corporations were the taxpayer's "clients"), the place where the Fees were paid, and the place where the taxpayer's major decisions were made in earning those Fees. Each of the foregoing connecting factors pointed to the Gatineau region as the *situs* of the Fees, which was off-reserve. Whether those Fees were considered to be income from a business or from employment in the taxpayer's hands, their *situs* was off-reserve for purposes of section 87 of the *Indian Act*. The Minister's assessments were affirmed accordingly.

¶48,560, *Murray*, 2013 DTC 1211

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