

2025 Canadian tax policy and controversy outlook



The better the question. The better the answer.
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Agenda

GAAR

**Future of tax dispute
management**

Solicitor-client privilege

GAAR Update: the current landscape

01

3295940 Canada Inc. v. Canada

FCA overturns TCC dismissal of "alternative transactions"

03

DAC Investment Holdings

non-CCPC planning upheld

02

Magren Holdings Ltd. v. Canada

abuse of capital gains system where no change in economic position

04

ARQ v. Kone Inc.

uncertain future for REPO structures?

The new GAAR regime

New ITA s. 245 (4.1) and (4.2) apply to transactions that occur after 2023

May include a transaction that is part of a pre-2024 series

Older arrangements may be under fresh scrutiny if they lack “economic substance”

CRA Aggressive Tax Planning now examining pre-2024 structures, including sale/leaseback transactions

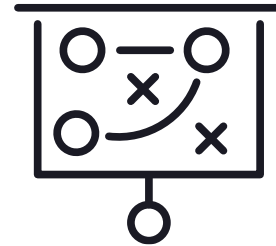
The future of tax dispute management



Audit stats
and trends



Top tips for
managing
(increasingly)
difficult auditors



When and how
to escalate



Best practices
for document
retention and
disclosure

Solicitor-client privilege: limits and best practices

Key features:

- Protects communications between lawyer and client
- Must be for the provision of legal advice
- May extend to communications with agents and third parties
- Is permanent

Key requirements:

- Between a lawyer and client
- Made in the course of seeking legal advice
- Intended to be confidential by the parties

SP privileged materials include:

- Letters / email between clients and lawyers
- Lawyer memoranda or opinions
- Drafts – agreements, reorg plans, step memos
- Invoices and WIP reports

Coopers Park Real Estate Development Corporation

Reiterates that privilege extends only to communications essential to the solicitor-client relationship, and does not cover accountants' advice; substance over form.

What structure works best to protect privilege?

Where accountant acts as a representative of the client for the purpose of obtaining legal advice – Susan Hosiery Ltd.

Questions?

Get in touch to learn more.

David Robertson

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David Robertson is one of Canada's leading tax litigators and indirect tax/transaction tax professionals. Formerly counsel with the Canadian Department of Justice Tax Law Services, David's experience includes resolving all forms of tax disputes - through rulings, objections, appeals, or settlement. He is a past chair of the Canadian Bar Association's/Tax Court of Canada's Bench & Bar Committee and was a contributing editor to GAAR Interpreted: The General Anti-Avoidance Rule.

David is also one of Canada's leading sales and indirect tax specialists, with expertise including GST/HST, provincial sales taxes, insurance premium taxes, carbon taxes and pricing, fuel and tobacco taxes, excise taxes, indigenous and first nations taxes, and other transaction-based taxes. He is a member of Canada's 25-member GST/HST Leaders' forum and is a co-instructor of CPA Canada's National GST/HST Tax Course and Cross-Border GST/HST Course.

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Adrienne is a member of the Tax Law Services group. Her practice focuses on tax dispute resolution and litigation. She combines deep tax knowledge with strategic problem-solving skills to help clients navigate the complexities of tax objections and appeals.

An accomplished tax lawyer, Adrienne works closely with multinational organizations in the private and public sectors advising on a diverse range of income tax, transfer pricing and GST/HST issues. She regularly advises on matters such as treaty and statutory interpretation, voluntary disclosures, taxpayer relief, nonresident filing and reporting obligations, tax collection, third-party liability assessments and the GAAR.

Known for her skill and advocacy before the courts, Adrienne represents clients in disputes with the Canada Revenue Agency and provincial tax authorities before the Tax Court of Canada, the Superior Court of Justice and the Federal Court of Appeal.



Lindsay Turcotte

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Lindsay is an associate at EY Law LLP and is a member of the Tax Law Services group. Lindsay specializes in tax litigation and resolving disputes with both the Quebec Revenue Agency and the Canada Revenue Agency. Dealing primarily with income tax and indirect tax disputes, Lindsay also advises clients in tax planning matters in various areas of tax law.

Lindsay graduated from the University of Sherbrooke where she completed a master in taxation with honours. She joined EY Law LLP in 2021 after clerking at the Tax Court of Canada.

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