

# THE CANADIAN TAXPAYER

Editor: Arthur B.C. Drache, C.M., Q.C.

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## Cabinet Shuffle Brings Fresh Faces at the Top

The first major<sup>1</sup> cabinet shuffle of the Trudeau administration was touted primarily as trying to better position Canada to deal with the incoming Trump administration with an emphasis on foreign relations and trade. But without being explicit about it, it is obvious that the Prime Minister was able to remove or demote some weak performers...which had nothing to do with Donald Trump.

The headline news is that Chrystia Freeland has been appointed Canada's new Minister of Foreign Affairs. Freeland, who leaves the international trade portfolio, replaces veteran MP Stéphane Dion.

Interestingly, Freeland was among 13 Canadians slapped with retaliatory sanctions by Russian President Vladimir Putin in 2014. The punitive measures were imposed to counter Canadian sanctions against

Russian officials over aggression in Ukraine and Crimea. The Russian Embassy in Ottawa confirmed that Freeland is still subject to those sanctions, which ban her from travelling to the country.

It is worth noting that Freeland will continue to have responsibility for trade issues with the United States.

But the future of the man she is succeeding is unclear. It seems Dion was made some offers of an ambassadorship which he appears to have turned down. While the swearing in ceremony was still under way, he issued a press release saying he was leaving politics which presumably means he'll resign his seat rather than sit as a backbencher. The door is still likely open to some appointment in the future.

"I, and all Canadians, owe him a deep debt of gratitude for his service," said a Trudeau press release. "I know I will be able to continue to count on his wisdom and his tireless service, and look forward to the next chapter of Mr. Dion's contributions to our country."

In contrast, the statement said outgoing Immigration Minister John McCallum will be named Canada's ambassador to China. McCallum, 65, served as Defence

<sup>1</sup> There was a minor shuffle some months ago when Fisheries Minister Hunter Tootoo left cabinet.

### IN THIS ISSUE

Cabinet Shuffle Brings Fresh Faces at the Top . . . . . 17

Minor Shuffle of Ontario and Alberta Cabinets . . . . . 19

Canada's Voluntary Disclosure Program: If It Ain't Broke Don't Fix It . . . . . 20

Rectifying Rectification — The Supreme Court Goes Back to Basics in Fairmont Hotels . . . . . 22

Federal Leadership Votes: Different Strokes for Different Folks . . . . . 23

Child Care Claims . . . . . 24

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Minister under former Prime Minister Jean Chrétien and presided over the veteran affairs file in former Prime Minister Paul Martin's cabinet. He led Canada's efforts to bring 39,500 Syrian refugees to Canada. Most agree that he did a more than creditable job and the ambassadorship is a just reward.

Ahmed Hussen, the Liberal MP for the Toronto-area riding of York South-Weston, will be Canada's new Minister of Immigration, Refugees and Citizenship. Hussen is Canada's first MP of Somali descent and is a lawyer and community activist.

François-Philippe Champagne becomes Minister of International Trade. He was parliamentary secretary to Finance Minister Bill Morneau and performed creditably. His professional background is suited to the new job as he was an international trade specialist, with over 20 years' experience working for major companies worldwide.

He is one of the new faces in the cabinet along with Hussen and Karina Gould who was named Minister of Democratic Institutions, taking over from Maryam Monsef who was clearly out of her depth with the job of trying to shepherd through the voting reform file.

Gould, 29, a former trade and development worker who represents the riding of Burlington, Ontario, was promoted from her previous role as parliamentary secretary to the Minister of International Development.

Patty Hajdu moves from Status of Women to Labour and Monsef is now in charge of the Status of Women file.

Besides Dion and McCallum, the only other MP to lose a cabinet job was MaryAnn Mihychuk, shuffled out of her office as Minister of Employment, Workforce Development and Labour. As is normally the case, no reason was given but there were rumours in Ottawa to the effect that there had been complaints about the way she treated staff.

Her exit comes five months after Trudeau cut her duties, passing the employment insurance file from her portfolio to Jean-Yves Duclos, the Minister of Families, Children and Social Development. That move was billed as a rebalancing of workloads, but insiders said it was also a message to Mihychuk to shape up after Trudeau received a number of complaints about her handling of EI matters.

The Prime Minister said of her:

The Honourable MaryAnn Mihychuk has served the government with distinction and oversaw a significant expansion of the Canada Summer Jobs program and settled the Canada Post labour dispute as Minister of Employment, Workforce Development and Labour. The Honourable MaryAnn Mihychuk will continue to serve as MP for Kildonan–St. Paul.

If you're counting, the gender balance amongst the cabinet members remains equal.

There was of course a concomitant shuffle of cabinet committee posts. It is of some interest to note one in particular.

The **Cabinet Committee on Canada-United States** considers issues concerning the fostering of strong relations between Canada and the United States and the advancement of mutual interests.

Chair: The Hon. Marc Garneau who takes over the Chair from Freeland

Vice-Chair: The Hon. Ralph Goodale

The Hon. Bardish Chagger

The Hon. François-Philippe Champagne

The Hon. Kirsty Duncan

The Hon. Chrystia Freeland

The Hon. Karina Gould

The Hon. Ahmed D. Hussen

The Hon. Lawrence MacAulay

The Hon. Catherine McKenna

The Hon. Harjit Singh Sajjan

Note that each of the newcomers to cabinet is on this committee.<sup>2</sup>

In advance of a more general appointment of parliamentary secretaries, the Prime Minister announced the appointment of Andrew Leslie, Member of Parliament for Orleans, to the position of parliamentary secretary to the Minister of Foreign Affairs. In this new position, Mr. Leslie will assume special responsibilities for the Canada-U.S. relationship and play a critical role in building ties with the new U.S. administration. It has been widely speculated that despite not being a minister, Leslie would be named to the cabinet committee on U.S. Relations because of his close ties to key members of the U.S. military.

To replace Leslie as Chief Government Whip, Trudeau named Pablo Rodriguez, Member of Parliament for Honoré-Mercier. Rodriguez was the Member of Parliament for Honoré-Mercier from 2004 to 2011 and returned in 2015. He was named parliamentary secretary to the Minister of Infrastructure and Communities in December of that year.

One of the interesting elements of the change is the fact that the three ministers who are out of cabinet are all over 60. In a single day the average age of the

members of Prime Minister Justin Trudeau's cabinet dropped from 52 to 50 making it one of the younger cabinets in Canadian history.

Ralph Goodale represents age and experience having been born in 1950 and first elected when he was 24. The fact that he is Trudeau's only Saskatchewan MP probably gives him a certain level of protection against ageism. But don't forget Lawrence A. MacAulay who was born September 9, 1946, Trudeau's Minister of Agriculture. He has represented the riding of Cardigan, Prince Edward Island in the House of Commons since 1988.

## Minor Shuffle of Ontario and Alberta Cabinets

A couple of days after the federal Liberals did a major cabinet shuffle there were some minor changes in the Ontario cabinet...changes which few will note beyond some civil servants and the family members. A news release stated:<sup>1</sup>

Following the retirement from provincial politics of David Oraziotti, MPP for Sault Ste. Marie, Marie-France Lalonde moves from Minister of Government and Consumer Services to become Minister of Community Safety and Correctional Services. Lalonde will continue to serve as Minister Responsible for Francophone Affairs.

Jeff Leal is appointed Minister Responsible for Small Business, in addition to retaining his previous role as Minister of Agriculture, Food and Rural Affairs.

Indira Naidoo-Harris takes on the new portfolio of Minister of Women's Issues. She will lead the implementation of the province's gender wage gap strategy and coordinate ongoing efforts to build gender equality across Ontario. To ensure the government is helping give every young person in Ontario the best possible start in life and creates 100,000 new licensed child care spaces within five years, and building on her previous role as Associate Minister of Education (Early Years and Child Care), MPP Naidoo-Harris will also serve as Minister Responsible for Early Years and Child Care.

Dipika Damerla, previously Minister Responsible for Seniors, becomes Minister of Seniors Affairs, leading a new, standalone ministry. She will work with partners to promote age-friendly communities and improve the quality of life of Ontario seniors.

<sup>2</sup> For a full listing of all committees, see [http://pm.gc.ca/sites/pm/files/docs/Cab\\_committee-comite.pdf](http://pm.gc.ca/sites/pm/files/docs/Cab_committee-comite.pdf).

<sup>1</sup> See <https://news.ontario.ca/opo/en/2017/01/marie-france-lalonde-ontarios-new-minister-of-community-safety-and-correctional-services.html>.

Tracy MacCharles becomes Minister of Government and Consumer Services and retains her role as Minister Responsible for Accessibility.

The cabinet actually shrank marginally even though there are two new departments.

And in Alberta, Premier Rachel Notley reconfigured her cabinet and split the human services department into two ministries, a move she called “overdue”.

The province will now have a Department of Children’s Services, led by former Municipal Affairs Minister Danielle Larivee.

The other half of the ministry, now known as Community and Social Services, will be headed by Irfan Sabir, the former Minister of Human Services.

Shaye Anderson, the MLA for Leduc-Beaumont, will replace Larivee as Municipal Affairs Minister.

The decision to split the ministries was not surprising, given that Notley mused about making such a change in her year-end interviews in December. Human Services was created in October 2011 by amalgamating children’s services, employment, immigration, housing and homeless supports under one mega-ministry.

In each province, the government, according to the polls, can only be described as “beleaguered” and one can doubt whether these changes will make any political impact.

## Canada’s Voluntary Disclosure Program: If It Ain’t Broke Don’t Fix It

David H. Sohmer

The recently issued Report on the Voluntary Disclosure Program by The Offshore Compliance Advisory Committee concluded that the program (“VDP”) “could be made more effective and more fair” by providing less generous relief in certain circumstances. It is somewhat surprising that the committee paid little or no attention to the following.

1) The 2004 Fall Report of the Auditor General of Canada contained the results of her examination of the program. In response to the Auditor General’s recommendations, the CRA commenced an in depth review of the program and in 2010 made public its conclusion:

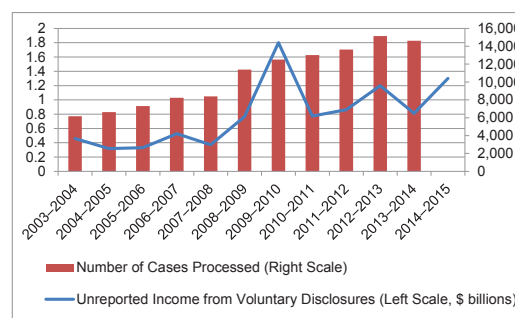
We have reviewed the voluntary disclosure program (VDP) and no changes are forthcoming. The VDP is a very successful program that encourages taxpayers to correct their tax information and avoid being penalized and prosecuted.<sup>1</sup>

2) In 2010, the then Minister of National Revenue, Keith Ashfield, stated:

In fact, because more and more people are coming forward to declare their offshore assets, we are recovering far more in tax revenue than if the CRA went looking for this money. Rather than reviewing piles of documents, chasing anonymous leads and spending weeks in court proceedings; Canadian taxpayers are now coming to the CRA directly to clear their conscience...they are coming forward to declare their assets in numbers never seen before.<sup>2</sup>

3) The 2013 Fall Report of the Auditor General of Canada observed that “[i]n the years after the Agency received the Liechtenstein list (data regarding Canadians with accounts at the LGT Bank received in 2007), the number of voluntary disclosures increased dramatically”. The following graph tracks the increase from 2003-2004 to 2013-2014:<sup>3</sup>

Figure 1 – Number of Voluntary Disclosures Processed and Amount of Unreported Income in Relation to Voluntary Disclosures, 2003–2004 to 2014–2015



Note: The number of voluntary disclosures processed for 2014–2015 is not available.

Source: Figure prepared using data obtained from: Canada Revenue Agency, *Annual Reports to Parliament*, 2003–2004 to 2014–2015.

4) The CRA Annual Report to Parliament, 2014-2015, indicates that the increase has continued unabated:

- “Total unreported income from all voluntary disclosures was over \$1.3 billion, an increase of 65% over the 2013-2014 fiscal year.”

1 2010 CTF Conference Report, CRA Roundtable.

2 *The National Post*, October 9, 2010.

3 Report of the Standing Committee on Finance, October 2016 : The Canada Revenue Agency Tax Avoidance and Tax Evasion : Recommended Actions. See page 5 of the report at [http://www.parl.gc.ca/Content/HOC/Committee/421/FINA/Reports/RP8533424/421\\_FINA\\_Rpt06\\_PDF/421\\_FINA\\_Rpt06-e.pdf](http://www.parl.gc.ca/Content/HOC/Committee/421/FINA/Reports/RP8533424/421_FINA_Rpt06_PDF/421_FINA_Rpt06-e.pdf).

- “Total unreported income from offshore disclosures was \$780 million, an increase of 157% from 2013-2014.”
- “There were 19,134 voluntary disclosures received in fiscal year 2014-2015, an increase of 21% over the prior year.”

By way of comparison, a total of 55,800 taxpayers made disclosures under U.S. Offshore Voluntary Disclosure Program.<sup>4</sup>

- 5) The CRA Annual Report to Parliament, 2014-2015, also states that the cost of administering the VDP in the 2014-2015 fiscal year was \$5,325,721 and the human resources consisted of 72 full-time equivalents. By way of comparison, Quebec, which administers its own VDP, received 1,531 disclosures in its 2105-2016 fiscal year and human resources in its 2014-2015 fiscal year consisted of 23.4 full-time equivalents.
- 6) The CRA Annual Report to Parliament, 2014-2015, also noted that “(T)he number of disclosures and the amount of undeclared disclosures, in part due to continued international efforts to share tax data, made up most of the increase (in unreported income from offshore disclosures.)”. Canada and Switzerland have agreed to share tax data beginning in 2017 with the first transmission of data in 2018. It is reasonable to expect that the number of disclosures after 2017 will decrease dramatically to well below pre-Liechtenstein list levels (assuming that a substantial number of the pre-Liechtenstein list disclosures related to offshore accounts).
- 7) Based on personal knowledge of data gleaned from hundreds of VDP submissions, it is reasonable to assume that data available to the CRA indicates that the vast majority of taxpayers who have availed themselves of the program are golden-agers or heirs who have inherited accounts from golden-agers. The data should also indicate that most of the accounts were opened more than 10 years prior to the submission and that no material fresh deposits were made in the 10-year period. It is highly unlikely that non-compliance by golden-agers was encouraged by the VDP.
- 8) A condition for relief under the U.S. Streamlined Foreign Offshore Procedures is that the failure to

report income and submit required information returns be attributable to “non-wilful conduct” which Form 14653 defines as “conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.” Form 16453 also requires taxpayers to provide specific reasons for the failure, and to “(I)nclude the whole story including favorable and unfavorable facts”. The Advisory Committee recommends that there be reduced relief where there is “deliberate or wilful default or carelessness amounting to gross negligence”. In order to make a determination, a CRA auditor would require “the whole story” in all disclosures. Determining whether there is deliberate or wilful default on the basis of an unsubstantiated, self-serving and often ghost-written story is impossible to do on a reasoned basis. (The U.S. Department of Justice is reviewing whether taxpayers may have submitted false “non-wilful” certifications.<sup>5</sup>)

- 9) **Subsection 220(3.1)** is only the basis for granting relief for interest and one of the bases for relieving penalties. It is **subsection 152(4)** which gives the Minister the discretion to make an assessment, reassessment or additional assessment of tax for a taxation year which is at the core of the VDP. The cost of a disclosure is determined primarily by which years are assessed (there is no tax and no interest where there is no assessment). The CRA Voluntary Disclosures Program (VDP) Operations Manual effectively removes the element of discretion by implicitly limiting the years to be reassessed to the years for which banks are required by the laws governing them to retain documents, irrespective of deliberate or wilful default.
- 10) The CRA Annual Report to Parliament, 2014-2015, states that the percentage of files completed vs. the intake of voluntary disclosures submissions was 95 percent in 2014-2015. If the exercise of discretion will be required to determine whether relief should be reduced, the completion percentage will be significantly lower.

The committee concluded that the VDP “could be made more effective and more fair”. If the yardsticks for effectiveness are the number of non-compliant taxpayers brought into compliance and the cost of doing so, the VDP rates an A+. With respect to fairness, the answer is that the horse is already out of the barn;

<sup>4</sup> 2016 CTF Annual Conference, Daniel Price and Roy Berg: IRS and Practitioner Panel: Update on U.S. Voluntary Disclosure Programs.

<sup>5</sup> October 31, 2016 TaxNotes.

the number of voluntary disclosures will decrease dramatically commencing in 2018.

Diane Lebouthillier's comments on the committee report are contained in a press release dated December 8, 2016:<sup>6</sup>

Minister (of National Revenue) Lebouthillier welcomed the overall tightening of the VDP to ensure fairness of the tax system, notably in order to limit the repeated use of this program by sophisticated taxpayers who wish to minimize what they owe and restrict the circumstances in which they can be used. The Minister and the CRA will leverage the OCAAC's recommendations to review the VDP parameters. Changes will be communicated in late 2017.

Since the VDP already prohibits repeated use and since the number of disclosures will decline dramatically after 2017, the statement is an acknowledgment that the fairness of the program is quickly losing its legs as a political issue. It is expected that any fix will be cosmetic in nature.

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<sup>6</sup> See <http://news.gc.ca/web/article-en.do?nid=1167309>.

## Rectifying Rectification — The Supreme Court Goes Back to Basics in Fairmont Hotels

*Adam Aptowitz*

The recent Supreme Court of Canada decision in *Canada (Attorney General) v. Fairmont Hotels Inc.*<sup>1</sup> is of interest to the entire legal community but of perhaps particular importance to the tax world. The case dealt with the concept of rectification — usually only examined in detail in the first year of law school. Rectification is used when a written contract does not reflect the intention of the parties. In those cases a court can change the contract to match the intentions of the parties. Whereas this can be an issue for all contracts in all circumstances, the tax world is particularly interested in the concept because not only do tax consequences flow from almost every agreement but those consequences are often the reason for the agreement in the first

place — particularly between non-arm's length parties. Consequently, if the agreement does not produce the desired tax consequences parties have been known to seek rectification in order for the agreement to be changed and the desired outcome achieved.

The formal concept of rectification for those of us who went to law school prior to the Ontario Court of Appeal decision in *Juliar*<sup>2</sup> (2000) meant, quite simply, that if the written words on the page did not represent the agreed upon intention of the parties then rectification was the appropriate remedy to change the contract — with the blessing of the relevant court. However, in *Juliar* the concept was subtly changed but with major consequences. There the Court held that rectification could be granted if the **outcome** of the agreement rather than the agreement itself did not reflect the intention of the parties. Of course, rectifying a contract to change the outcome is different than amending a contract which does not reflect the intention of the parties.

In *Fairmont Hotels* the Supreme Court effectively returned the law to its previous state, namely, rectification is only available where the agreement does not reflect the intention of parties. If the outcome is an undesired outcome but the words reflect what the parties wanted to do then rectification cannot be granted. Moreover, the Court held that there must be some extrinsic evidence to indicate what the parties actually intended for the wording of the document before a Court can amend the agreement.

This is a particular concern to the tax community where agreements are often structured between taxpayers and related entities. Often times, agreements between these parties are executed only for tax purposes. Especially under these circumstances it would be imperative for advisers to have a solid understanding of the tax consequences of a particular set of transactions prior to reducing the agreement to writing. It may also be important that planning memos be produced prior to any transaction so that the extrinsic evidence can be produced just in case rectification is required. Further, in a situation where counsel are developing paperwork where the CRA may have an alternate application of the law to the facts that it may be wise to detail the reasoning behind the agreements in advance so as to

<sup>1</sup> 2016 SCC 56, 2016 CarswellOnt 19252 (S.C.C.).

<sup>2</sup> *Juliar v. Canada (Attorney General)* (1999), 46 O.R. (3d) 104, [2000] 2 C.T.C. 464 (Ont. S.C.J. [Commercial List]), affirmed (2000), 50 O.R. (3d) 728, [2001] 4 C.T.C. 45 (Ont. C.A.), leave to appeal refused [2000] S.C.C.A. No. 621 (S.C.C.).

avoid any negligence suits because clearly rectification is now less of an avenue to protect counsel who do not understand the tax consequences of an agreement.

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## Federal Leadership Votes: Different Strokes for Different Folks

All readers will be well aware that both the federal Conservative Party and the federal NDP are involved in leadership races. The Conservatives will decide on a leader on May 27. The NDP campaign will end sometime in October but just when in October is not certain.

As we write, the obvious difference between the two campaigns is that the Conservatives have 13 candidates running with at least the possibility of one more high-profile person joining. By contrast, at this juncture there is only one NDP candidate, Peter Julian, a B.C. Member of Parliament. However, he is not yet an “official” candidate although he registered with Elections Canada which allows him to raise money. There are some hoops he must jump through with the party, and that includes getting the requisite 500 signatures reflecting party members from various regional and demographic breakdowns, and paying the \$30,000 entry fee.

A second potential candidate is Charlie Angus who resigned as the NDP’s caucus chair and Indigenous Affairs critic in November in order to consider a run for the leadership. As we write, he hasn’t registered with either Elections Canada nor with the party. July 3 is the cut-off date for entering the race.

Given the widespread interest in possible reforms to the method by which Canadians will choose parliamentarians, it is interesting to note the different approaches adopted in the leadership voting by the two parties.

For the Conservatives, Canada’s 338 electoral districts are weighted equally. This means that a riding with 1,000 members will carry as much weight as a riding with 100. Thus, having a wide base of support throughout the country is vital. Having a concentration of support in one region means a lot of wasted votes.

But the New Democrats give each member’s vote equal weight, meaning candidates will be gunning for support in the parts of the country where there are the most members. These are concentrated where provincial parties tend to be stronger, because the provincial and federal wings of the party are affiliated and membership goes through the provinces. Provincial members are automatically members of the federal NDP as well.

In the 2012 vote which brought Thomas Mulcair to the leadership, about 60 percent of eligible voting members came from just two provinces, Ontario and British Columbia. Another 20 percent resided in Saskatchewan and Manitoba. With no provincial wing, Quebec tends to have less clout in the NDP as membership is low.

By contrast, Quebec’s 78 ridings — representing about one-fourth of all votes — make the province very important in the Conservative leadership race.

Voting in the Conservative and NDP leadership races will be similar. Voters will be able to rank their preferences, and if no candidate has majority support on the first ballot, the least popular candidate will be dropped and their votes distributed to their supporters’ second choices. This process continues until a candidate hits 50 percent plus one vote.

For the Conservatives, this process will be undertaken with the one ballot members will cast. The results will be announced in a single day.

The New Democrats, however, will announce the results of each round every Sunday in October, dropping off the least popular candidate and starting a new round of voting. The process starts on October 1 with at most five week-long rounds of voting ending on October 29.

The votes for candidates who are dropped off the ballot or who withdraw from the race each week in October will be up for grabs. Candidates still in the running will try to capture those votes, and they will want the help of the losing candidate to get them.

To complicate the situation, those who cast ballots online will have the opportunity to re-cast their ballots each week, or they can leave them as is. Members who vote by mail, on the other hand, will lock their votes in.

The question is whether amongst the general public the interest in who will ultimately win will be stimulated by stretching out the process or whether the process will generate widespread ennui.

## Child Care Claims

Often the only time a tax adviser hears about child care issues is to let the client know the parameters of what can and cannot be claimed. But a related issue often is to determine whether an individual who is hired to care for kids is or is not an employee for tax purposes.

But we have to admit that a **ruling letter** published in October of 2016<sup>1</sup> raised issues we had never put our mind to.

The main question was whether an employer of a nanny can claim the employer's share of the Canada Pension Plan contributions and the employment insurance premiums as child care expenses for the purpose of the child care expense deduction under **section 63** of the *Income Tax Act*. A subsidiary question was whether an employer in such a situation is required to reduce the amount of child care expenses that they would otherwise claim under section 63 of the Act by any amount received as a small business job credit. The letter states:

Section 63 of the Act provides a deduction, in computing a taxpayer's income for a tax year, for amounts paid for child care expenses incurred in respect of an eligible child of the taxpayer. The definition of a child care expense in subsection 63(3) of the Act requires that the expense be incurred to enable the taxpayer or a supporting person who resided with the eligible child at the time the expense was incurred to undertake specific activities as outlined in paragraph 1.9 of the Income Tax Folio **S1-F3-C1**, Child Care Expense Deduction ("Folio").

Generally, a child care expense is an expense incurred in a taxation year for the purpose of providing child care services for an eligible child of a taxpayer in Canada. According to subsection 63(3) of the Act, child care services include babysitting services, day nursery services or services provided at a boarding school or camp. As noted in paragraph 1.14 of the Folio, this list is not all inclusive. For example, advertising expenses and placement agency fees incurred to locate a child care provider and mandatory registration fees may also

qualify as child care expenses. The definition of child care expense also specifically excludes certain expenses as explained in paragraph 1.20 of the Folio.

In our view, providing that the salary or wages paid to the nanny is a child care expense that meets all of the requirements of section 63 of the Act, **the taxpayer's (that is, the employer of the nanny) share of the Canada pension plan contributions and the employment insurance premiums would also be child care expenses for the purpose of the child care expense deduction.** [Our emphasis.]

The letter goes on to deal with the job creation credit.

The small business job credit under the *Employment Insurance Act* is a two-year measure that lowers small businesses' employment insurance premiums from the legislated rate in 2015 and 2016. Generally speaking, an employer is eligible for the credit if certain conditions are met, including that the total of the employer's employment insurance premiums paid in 2015 or 2016 is \$15,000 or less.

As stated on the Canada Revenue Agency's website, normally, if an employer receives this credit, it is reported as income or as a reduction to the employer's employment insurance expense. However, when the employer does not carry on a business, such as when a taxpayer hires a nanny as an employee to provide a babysitting service in the taxpayer's home for the taxpayer's child, other rules may apply.

Under paragraph 63(1)(d) of the Act, no deduction may be claimed for child care expenses for which any taxpayer is or was entitled to a reimbursement or any other form of assistance unless the reimbursement or assistance is included in a taxpayer's income and is not deductible in computing that taxpayer's taxable income. The small business job credit would be considered a reimbursement or assistance that may be received by a taxpayer who directly employs a person to care for their child. **Therefore, for the purpose of determining the deduction for child care expenses under section 63 of the Act, the employer's share of the employment insurance premiums that are paid by the employer in respect of the nanny must be reduced by the amount of the small business job credit in respect of such premiums.** [Our emphasis.]

We filed this under questions we never thought to ask!

<sup>1</sup> CRA Views 2016-06547517, "Child care expense and SBJC", July 21, 2016.