

TAX LITIGATION NOTE

July 24, 2020

Tax Court of Canada Establishes Fast-Track Settlement Conferences

On July 21, 2020 the Tax Court of Canada (“TCC”) issued Practice Note 24, which establishes a new procedure for Fast-Track Settlement Conferences. This new streamlined settlement conference procedure was first announced by Chief Justice Rossiter in a June 25, 2020 video conference as an option for parties to a TCC appeal to conduct a settlement conference outside the court’s normal processes.

The TCC is concerned that the COVID-19 pandemic has created delays for parties with appeals before the Court. The new settlement conference procedure has been introduced as an additional option for resolving TCC appeals. The process is available to parties temporarily to help alleviate the backlog caused by the Court’s closure.

A. How to Apply for the Fast-Track Settlement Process

The parties to an appeal must jointly file a written request to apply for the fast-track settlement conference. The written request must be no longer than 12 pages and must outline:

- the amount in issue;
- the material facts in dispute;
- the key issues to be discussed at the settlement conference;
- each party’s position on the issues to be discussed;
- why the parties believe their appeal is suitable for a settlement conference;
- any settlement offers which have been made to date;
- the appeal’s current stage of discovery; and
- the parties’ preferred venue for a settlement conference, being one of Vancouver, Toronto or Montreal. **Note** on June 23, 2020 Chief Justice Rossiter indicated that settlement conferences under the new fast-track settlement conferences process will only be held in Vancouver, Toronto or Montreal. However, there is nothing to prevent parties located in a different Judicial Centre from applying for the procedure, provided they are willing to travel to Vancouver, Toronto or Montreal.

This process will not require parties to have made a written offer of settlement, which is a requirement for the existing regular settlement conference procedure set out in TCC Practice Note No. 21.

Although there is a requirement to advise of the appeal's current stage of discovery, the strict conditions of eligibility for the new process are that:

- the appeal in question must be a General Procedure appeal;
- a reply to the notice of appeal must have been filed; and
- both parties to the appeal must agree in writing to apply for a fast-track settlement conference.

Therefore, there is no requirement that the parties must have commenced the discovery process. Under the previously existing settlement conference procedure, a settlement conference generally occurs only after discoveries have been completed. Prior to setting a General Procedure appeal down for a Hearing, the parties normally are requested to advise if a settlement conference would be appropriate.

B. How a Fast-Track Settlement Conferences is to be Scheduled

Once the written application is received, a TCC judge may consult with the parties jointly or individually, as would be done in a breakout session during a standard settlement conference. If the judge is of the view there are settlement possibilities which should be explored at a fast-track settlement conference, the judge will contact the parties to:

- provide them with a date for the conference;
- provide them with a location for the conference, being one of Vancouver, Toronto or Montreal;
- confirm that the parties and their counsel will attend the conference;
- discuss settlement briefs and the briefs' contents; and
- make any other request necessary to ensure that the conference proceeds efficiently.

The expectation is that fast-track settlement conferences will be scheduled within 90 days of the date of the parties' joint written request.

The reference to settlement conference briefs is a reference to the requirement in Rule 126.2 of the TCC *General Procedure Rules* that the parties to a settlement conference submit a settlement conference brief at least 14 days before a settlement conference is conducted.

At the conclusion of the conference, if the appeal does not settle, it will be put back in the scheduling queue at the same stage as it was prior to the fast-track settlement conference being held. The TCC judge who conducted the settlement conference will not sit as the trial judge, should the appeal require a trial, and will not communicate with the trial judge concerning any aspect of the fast-track settlement conference process.

C. Settlement of Tax Disputes in the Current Environment

The COVID-19 pandemic has created a number of pressures upon the Canadian tax courts, upon the Canada Revenue Agency (“**CRA**”) and upon taxpayers themselves. We are hopeful the present circumstances might cause the CRA to focus its efforts on more significant tax dispute matters, and perhaps adopt a heightened willingness to settle tax appeals before proceeding to a hearing.

The new fast-track settlement conference procedure is a positive indication of the TCC’s desire to be flexible and to facilitate the settlement of TCC appeals. Our experience is that settlement conferences are a very useful procedure which often force the parties to an appeal to more realistically consider their prospects for success. As such, it often leads to an efficient resolution of a tax appeal.

Accordingly, a taxpayer who has commenced a TCC appeal should consider whether the fast-track settlement conference process is a good option, in its circumstances, to seek an efficient settlement of its tax appeal.