

# TAX NOTES

May 20, 2020

## PROPOSED TIME LIMITS AND OTHER PERIODS ACT (COVID-19)

On May 19, 2020, the Minister of Justice released the proposed Time Limits and Other Periods Act (COVID-19), which was accompanied by a statement indicating that it is intended to ensure that Canadians and Canadian businesses are able to preserve their legal rights and facilitate access to justice. This proposed legislation is broadly applicable to federal enactments and actions against the Crown, and may provide relief for taxpayers or GST registrants who have not yet filed notices of appeal in the Tax Court of Canada. However, some aspects of the proposed legislation are not beneficial to Canadians and Canadian businesses and may have adverse consequences for taxpayers and GST registrants.

On the relieving side, the draft legislation provides that time limits in a federal statute to commence a court proceeding, take litigation steps in a court proceeding, or to apply for leave to commence a court proceeding or to do something in relation to a court proceeding are suspended from March 13, 2020 to September 13, 2020. These dates are not necessarily binding, as the Governor in Council (i.e. the federal cabinet) may fix an earlier date for the end of the suspension or may make an order lifting a suspension for a particular proceeding.

Courts will also be granted flexibility to deal with suspended litigation. Different courts will be allowed to order different beginning and end dates for the suspension of statutory time limits, provided the commencement date for the suspension period remains March 13, 2020 and the duration of the suspension does not exceed six months. Courts are also empowered to make orders that cancel or vary the effect of a failure to meet a suspended time limit.

For taxpayers, this means that any deadline to file a notice of appeal in the Tax Court of Canada falling between March 13, 2020 and September 13, 2020 will be extended to at least September 14, 2020, assuming that the Governor in Council or the Chief Justice of the Tax Court of Canada do not order a shorter suspension. Similarly, the deadline to file a notice of appeal in the Federal Court of Appeal or to commence an application for judicial review in the Federal Court falling between March 13, 2020 and September 13, 2020 will be extended to at least September 14, 2020, assuming no orders to the contrary from those courts or the Governor in Council. It is also possible that the Tax Court of Canada, the Federal Court or the Federal Court of Appeal will make orders cancelling the effect of a taxpayer failing to meet a deadline to commence a proceeding.

The Tax Court of Canada had already issued a Practice Direction and Order that suspended the time limits under the Tax Court of Canada Rules (General Procedure) and its own timetable orders to complete litigation steps in actions that were already commenced, with this suspension period beginning March 16, 2020 and ending 60 days after the date that the Court's offices open to transact

business. Similar orders were made by the Federal Court and Federal Court of Appeal. Given the inherent jurisdiction of these Courts to control their own processes and timelines under their respective rules of court, the draft legislation is not likely to have much practical impact on litigants who had commenced proceedings before March 13, 2020.

Less welcome in the draft legislation, and not highlighted in the accompanying commentary, is the power granted to the Minister of National Revenue to make an order suspending or extending the normal reassessment period under the Income Tax Act and the assessment period under the Excise Tax Act, provided that the order is made before September 30, 2020. The order may have effect retroactive to March 13, 2020 but cannot suspend or extend the normal reassessment period or assessment period by more than six months. The order may also cancel or vary the effect of the CRA failing to assess within the normal reassessment period or assessment period if the period expired before the date on which the order was made.

It is reasonable to expect that the Minister will exercise her power to make any order permitted by the legislation that is ultimately passed by Parliament. If that is the case, and if the legislation is enacted in substantially the same form as the draft legislation, the effect will be that the normal reassessment period for any taxpayer's return or the assessment period for any registrant's return that would have expired between March 13, 2020 and September 13, 2020 will be extended until at least September 14, 2020. As the order could be retroactive, it could cause any normal reassessment period or assessment period that had otherwise expired between March 13, 2020 and May 19, 2020 to be "reopened" and extended.

The draft legislation will not be tabled in Parliament until after the expiration of a 10-day consultation period beginning May 19, 2020. Felesky Flynn LLP will make submissions regarding the potential effects of the draft legislation on taxpayers and registrants, and any readers who would be adversely affected by a loss of certainty may also wish to consider making submissions. We will continue to monitor the progress of this draft legislation and would be pleased to discuss its potential impact on your tax positions.