

Challenging Times for CRA: Taxpayers are fighting capital gains hike

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On 16 April 2024, the Honourable Chrystia Freeland (“**Freeland**”) – then the Deputy Prime Minister and Minister of Finance – tabled “Budget 2024: Fairness for Every Generation”,^[1] which included a proposed increase of the capital gains inclusion rate from one-half to two-thirds for capital gains realized (i) by an individual over \$250,000 in a year, and (ii) by a trust or corporation in any amount (the “**Capital Gains Increase**”). The change was intended to take effect as of 25 June 2024. On 23 September 2024, Freeland tabled a revised Notice of Ways and Means motion (the “**NWMM**”) containing proposed legislative amendments to the *Income Tax Act* (Canada) (the “**ITA**”) and the *Income Tax Regulations* in Parliament to implement the Capital Gains Increase.^[2]

The Right Honourable Justin Trudeau, Prime Minister, announced on 6 January 2025, that Parliament has been prorogued until 24 March 2025. Any bill which had not received Royal Assent before prorogation is considered to be “entirely terminated” and, in order to be proceeded with in the new session of Parliament, must be reintroduced as if it had never existed.^[3] The NWMM, which had not received Royal Assent prior to prorogation, has been terminated. Despite this, the Canadian Revenue Agency (“**CRA**”) announced on 8 January 2025, that it will administer the Capital Gains Increase effective as of 25 June 2024,^[4] claiming that this is “consistent with standard practice”. A Department of Finance spokesperson said this of the implementation of the Capital Gains Increase:

Parliamentary convention dictates that taxation proposals are effective as soon as the government tables a notice of ways and means motion; this approach provides consistency and fairness in the treatment of all taxpayers.^[5]

Following the announcement, at least two challenges have been brought to the Federal Court (the “**Court**”) to challenge CRA’s administration of the Capital Gains Increase.

Challenge #1: Pelco Holdings Inc.

On 24 January 2025, an application was filed by Thorsteinssons LLP on behalf of Pelco Holdings Inc. (“**Pelco**”), a private company incorporated under the laws of British Columbia.^[6] In the application, Pelco alleges that Canadians are bound by the rule of law and are therefore only required to comply with provisions of the ITA as written – they are not bound by proposed amendments unless and until Parliament amends those provisions through a bill which receives Royal Assent. Pelco argues that enforcing tax legislation which has not yet been confirmed is a violation of the *Constitution Act, 1867*.

Pelco claims that Section 5 of the *Canada Revenue Agency Act* (the “**CRAA**”) specifies that CRA is responsible for supporting the administration and enforcement of the “program legislation”, which is defined to include the ITA. This suggests that the legislation governing CRA’s conduct appears to prohibit the enforcement of administrative policy that is contrary to the ITA as it is currently written.

Pelco suggests that CRA appears to effectively be instructing taxpayers to not comply with the law, but with CRA’s own administrative policy.

Pelco is seeking an injunction against CRA from administration of the Capital Gains Increase and that the Court direct CRA to administer the law as currently written.

Challenge #2: Debbie Vorsteveld

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In addition to Pelco's application, the Canadian Taxpayers Federation ("**CTF**") has announced that it is filing a legal challenge with the Court against CRA, on behalf of Debbie Vorsteveld ("**Vorsteveld**"), an individual resident in Maple, Ontario who, in 2024 sold a secondary home and is now faced with the Capital Gains Increase. CTF, in its 24 January 2025 press release, argues that the Capital Gains Increase will "cripple the Canadian economy" and "violates the fundamental principle of no taxation without representation".[7]

Vorsteveld's application includes similar arguments to Pelco's, stating that CRA's decision to administer the Capital Gains Increase is unconstitutional and CRA has no legal authority to unilaterally adopt, implement, or impose a tax absent Parliamentary authorization by way of duly enacted legislation. Additionally, Vorsteveld argues that the decision to apply the Capital Gains Increase before it has become law is beyond the scope of CRA's powers.

Vorsteveld is seeking an order from the Court prohibiting CRA from taking any further steps to administer the Capital Gains Increase unless and until it is authorized by Parliament. Additionally, Vorsteveld has requested an expedited hearing on the basis that individual taxpayers are required to file their taxes for the 2024 taxation year, and pay any taxes owing thereon, by no later than 30 April 2025.

Conclusion

If CRA's administration of the Capital Gains Increase is upheld by the Court, or if no decision is reached prior to upcoming filing deadlines, taxpayers will be put in a difficult position: comply with the law as it is currently written, or comply with CRA's administrative policy of applying the Capital Gains Increase prior to the legislation being passed. Failing to do either could lead to significant monetary consequences, including additional taxes, penalties and interest.

With Parliament being prorogued and the NWMM being terminated, as well as the current political uncertainty in Canada, it is unclear whether the Capital Gains Increase will be enacted or whether the NWMM will even be reintroduced before Parliament. As we await a decision from the Court, taxpayers should be aware that CRA will issue new forms for filing in accordance with the Capital Gains Increase by 31 January 2025. Interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing due date on or before 3 March 2025. A PDF of this blog is available for download [here](#).

(This article has been prepared for general information only and should not be considered personal tax advice. Specific professional advice should be obtained regarding any topic discussed in this article. If you have any questions about the above information, please contact a member of the Gardiner Roberts LLP's experienced Tax and Estates Planning Group.)

[1] <https://www.budget.canada.ca/2024/home-accueil-en.html>

[2] <https://fin.canada.ca/drlég-apl/2024/nwmm-amvm-0924-l-1-bil.pdf>.

[3] <https://www.ourcommons.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Ch08&Seq=7>.

[4] Businesses: Here are the top changes that will affect business taxes in 2025 - Canada.ca

[5] <https://www.cbc.ca/news/politics/prorogue-parliament-canada-meaning-1.7412120>

[6] Notice-of-Application-CRA-Capital-Gain-Challenge-Filed.pdf.

[7] Newsroom.

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