Tax Court hits CRA with $575,000 costs award

By DONALEE MOULTON

The Tax Court of Canada has ruled the allowable limits provision of the TCC tariff is not definitive and judges have the discretion to exceed amounts set out in it.

The court's June 9 decision in *Henco Industries Ltd. v. Canada* [2014] T.C.J. No. 147 pegged costs against the Canada Revenue Agency more than $575,000 — a significant amount, said William Innes, a tax lawyer with Rueter Scargall Bennett in Toronto. "It's probably one of the largest cost decisions the tax court has ever issued," he said.

The size of the award is likely to have ramifications on the CRA and taxpayers moving forward. It is anticipated both sides will want to think even more carefully about proceeding to tax court with the potential threat of large costs decision looming over them. Tax experts indicated the consideration may have a greater impact on the CRA, which until now has not faced cost awards of this magnitude. (The CRA is unable to comment on specific cases).

"The amount of the award — and the even-handed analysis that underlies the decision — will remind the government that the tax litigation will carry financial consequences," noted Toronto tax lawyer Peter Aprile.

The decision levels the playing field, said Geoffrey Shaw, a litigation lawyer with Cassels Brock & Blackwell in Toronto who co-represented Henco Industries Limited.

"The CRA will have to think twice before it levies substantial penalties and assessments," said Shaw. "If there is a monetary disincentive, it throws a wrench into the works."

The case involves Henco Industries, the owner and developer of Douglas Creek Estates in Caledonia, Ont., which became the site of a major protest by members of First Nations groups in early 2006. Protestors occupied the property and erected barricades, halting all development by Henco. The company obtained court orders requiring the protestors to vacate the land, which the Ontario Provincial Police were unable to enforce. After rezoning the land to preclude all development, the Ontario government paid $15.8 million to Henco under an agreement of purchase and sale to acquire the land, ensure the removal of the court

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orders, and secure a release from Henco, among other things.

The primary issue in the tax case was the proper treatment of the $15.8 million payment, which Henco characterized as a non-taxable capital receipt. The CRA argued that the payment was net profit. Following a seven-day trial, Justice Miller Campbell ruled in favour of Henco, finding that the entire $15.8 million payment was a non-taxable capital receipt. That verdict then gave rise to the issue of costs.

Henco asked the tax court to award costs equal to 75 per cent of legal fees plus disbursements. The government lawyer argued that cost award should be $47,463, based on the value of the fees and disbursements and the tax court tariff. The government also put forward an alternative accounting in case this figure was rejected: 20 to 50 per cent of Henco's costs. The court settled on 45 per cent.

"The 75 per cent was overreaching," said Innes. "Justice Miller concluded he would go to the high end of the Crown's suggested range."

The range put forward by the government was noteworthy in and of itself, he added.

"It's not common to see them go that high. It may be that having read the tea leaves in the trial, primarily entirely in favour of the taxpayer, the Crown thought it should err on the side of greater generosity than it normally would."

Arriving at costs of 45 per cent was not an exact science. Numerous factors had to be taken into consideration including the importance of the tax issue before the court. Also weighing on the court was how much work was really necessary to demonstrate a successful case at trial.

"It is a conundrum to determine just how much of a successful litigant's exhaustive exploration of evidence is justifiably to be footed by the losing side," Justice Miller wrote.

"The *Henco* cost award decision strikes the right 'art versus science' that cost awards require," Aprile said.

"We're going to see more of these," said Innes. "The tax court will move more in the direction of provincial courts, which have high awards."

The trend has already emerged, said Shaw. "When a taxpayer is faced with a substantial amount of tax at issue, the courts will look to the real costs and reward the taxpayers accordingly."

Shaw cautioned, however, that it is not only the CRA that will have to think carefully before proceeding to the tax court. Taxpayers and their accountants will want to assess the benefits and the financial risks that the *Henco* decision highlights.

"It's a rewarding and cautionary tale. What happens when the CRA is successful in one of these cases and costs are assessed the other way? It's possible."

Fast functionality marks new QuickBooks

COMPUTER MONITOR

By Richard Morochove

There are a few useful improvements for accountants in QuickBooks 2015, but most of the action resides under the hood.

Richard Morochove, Morochove & Associates

Intuit Canada has quietly released the next version of its QuickBooks small business accounting program for the Windows desktop, dubbed 2015. I would call this new version more of a maintenance release rather than a dramatic makeover.

The company also announced a new version of QuickBooks Online Accountant.

There are a few useful improvements for accountants in QuickBooks 2015, but most of the action resides under the hood. Much of the software code has been rewritten to optimize performance. I noticed a speed improvement right off the bat, though it varies depending upon the task.

According to Intuit Canada, the desktop version of QuickBooks 2015 is 1.5 times faster than the previous version. The metrics were determined by measuring the top tasks in QuickBooks 2015 against the speed of those in QuickBooks 2014.

There are a number of more minor improvements. Here are what I consider to be the highlights.

You can pin a note to a customer or vendor so that it always shows up in the summary for that account. For example, you might note that this is a preferred customer designated for expedited shipments or that the customer is subject to a credit hold. I think this improvement could be very worthwhile.

Recorded billable time and costs are highlighted and less able to be overlooked. This could result in better billings and recovery of recorded time and costs.

You can now add comments to a report snapshot. This is potentially a big timesaver for accountants who want to follow up on unusual variations in results.

The screen display of reports now uses subtle shading to highlight different line items. This can make it easier to associate the number with the account or item description.

A client can send a portable company file to an accountant for review. A portable file is smaller than a complete backup because it removes certain superfluous data that is not integral to the financial results.

One can now send three different types of company data backups from QuickBooks. In addition to the portable and full backup, there is also the Accountant's Copy. If you're an external accountant, you'd figure you would always want the Accountant's Copy, right?

Well, it's not so straightforward. The prime advantage of an Accountant's Copy is that the client can continue to work on their own data in QuickBooks, making entries while the public accountant reviews the Accountant's Copy and makes any necessary adjustments. These accountant adjustments can later be imported by the client into their set of accounting data.

However, there are some limitations on what one can do in the Accountant's Copy. For example, there are transaction restrictions in the Accountant's Copy. In an Accountant's Copy, you can add, edit, void, and delete most transactions. However, according to Intuit, you can't add, edit, void, or delete the following transactions: payroll; non-posting transactions (such as estimates, sales orders); funds transferred between accounts; build assemblies; and sales tax payments. You can add or delete, but not edit or void bill payments by credit card. You can add, delete, and edit, but not void payments received.

There are also other restrictions, such as those related to reconciliations.

Intuit advises that if the restrictions on using an Accountant's Copy won't accommodate your situation, you can convert it to a regular company file. If you do this, your client will not be able to automatically import your changes. He or she will have to enter your changes manually in the company file.

Overall, I would say that while the improvements in QuickBooks 2015 are worthwhile, it's not a hugely compelling new release.

At the QuickBooks Connect conference in San Jose, Calif., last month, Intuit unveiled the new QuickBooks Online Accountant, along with additional enhancements to their cloud-based offerings.

Highlights include a new customizable dashboard, new bookkeeping and payroll detail tabs, and a new accountant toolbar.

Collaboration with all employees and clients will be easier through a new client document centre, new employee access controls and new management reports.

The document centre will be powered by Box. It allows users to request and receive documents from clients directly inside QuickBooks Online Accountant. After an initial setup and account linkage with a free 10GB Box account, users can view all requests and documents by client and easily keep track of what is received or outstanding. I can see the document centre as a time-saving way to manage communication with clients using QuickBooks.

The new Intuit Developer, previously the Intuit Partner Platform, will help third-party developers create new apps which integrate with the online service. I see this having the potential to allow more specialized apps to assist businesses involved in vertical industries.

There's also a new QuickBooks ProAdvisor program integrated into QuickBooks Online Accountant with enhanced wholesale pricing.

The new QuickBooks Online Accountant will start to roll out to users in December, with some capabilities such as the Box document centre available later in 2015.

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