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Deadlines Under Federal Legislation Temporarily Extended Due to COVID-19

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Introduction

Parliament passed on July 27, 2020, the *Time Limits and Other Periods Act (COVID-19)* (Time Limits Act), which we summarized in a previous [bulletin](#). Briefly, the Time Limits Act automatically suspends statutory time limits for federal civil proceedings for six months and grants federal ministers the power to issue orders extending statutory and regulatory time limits in a range of areas.

In recent weeks, federal courts have clarified how they intend to apply the Time Limits Act to their own internal rules establishing procedural deadlines for ongoing civil court cases. In addition, a number of federal ministers have availed themselves of their authority under the Time Limits Act to extend statutory and regulatory time limits. We discuss the material developments below.

Automatic Suspension of Time Limits in Civil Proceedings

The Time Limits Act automatically suspends statutory deadlines or limitation periods for instituting civil proceedings or taking steps in ongoing civil proceedings before federal courts for the period March 13, 2020 to September 13, 2020 (or such earlier date set by the federal cabinet by September 30, 2020). This suspension does not apply to criminal matters.

There has been some uncertainty as to how the Time Limits Act applies to deadlines and periods under rules established by the courts themselves under the authority of the *Federal Courts Act*, the *Tax Court of Canada Act* and the *Supreme Court Act*, as well as to directions made pursuant to those rules. Different levels of courts have taken different approaches in this respect.

- On September 3, 2020, the Federal Court of Appeal published a direction clarifying its view that the Time Limits Act does not apply to time limits under the *Federal Courts Rules* or orders, practice directions, and judgments made thereunder. Accordingly, any orders or practice directions made by the Federal Court and Federal Court of Appeal remain in full force and effect (including a direction by the Chief Justice of the Federal Court of Appeal phasing out previously announced suspended timelines as early as June 2020).
- By contrast, the Tax Court of Canada and the Supreme Court of Canada have aligned their respective rules with the Time Limits Act and excluded the period between March 13 and September 13, 2020, from the computation of time under those rules. The Supreme Court of Canada has also announced that the suspension periods in respect of Supreme Court proceedings expired at the end of the day on September 13, 2020.

For our summary of the current impact on timelines on various court processes, see [COVID-19 and the Courts: What You Need to Know](#).

The Extension or Suspension of Other Specified Legislative Time Limits

The Time Limits Act allows the responsible ministers under the covered legislation and regulations to make orders extending or suspending certain legislative time limits or deadlines for up to six months, with potential retroactive effect to March 13, 2020. Such orders may not be issued after September 30, 2020, and may not be for a duration exceeding six months.

Tax Matters

On August 31, 2020, the Minister of National Revenue issued orders extending various periods under the *Income Tax Act* (ITA) and the *Excise Tax Act* (ETA).

Statute Barring Periods

Under the ministerial orders, the period within which the Canada Revenue Agency (CRA) can issue reassessments in respect of years or periods that would otherwise have become statute-barred under the ITA or ETA on or after May 20, 2020, are extended by six months or until December 31, 2020, whichever is earlier.

Notably, periods that expired between March 13, 2020 and May 19, 2020, are not covered by the orders, even though the Minister arguably had the authority to extend those periods as well under the Time Limits Act. Instead, the order only extends deadlines that would have expired after the date the draft legislation was first announced (i.e., May 19, 2020).

SR&ED Claims and Investment Tax Credits

The Minister extended the deadlines for filing Scientific Research and Experimental Development (SR&ED) claims as well as for making claims for SR&ED investment tax credits for a maximum of six months beginning on or after March 13, 2020, up until December 31, 2020. These deadlines are computed based on a taxpayer's tax filing due-date for a year.

Relief for Late-Filed Notices of Objection

Although the Time Limits Act does not provide for an automatic extension of the normal 90-day statutory deadline for filing notices of objection to tax assessments, a discretionary mechanism exists in the ITA and ETA for the CRA to grant late-filing relief to taxpayers who file objections within one year of the normal deadline and who meet certain conditions. Relying on this discretionary power, the CRA previously announced that it would proactively grant late-filing relief, until June 30, 2020, to all taxpayers whose objections were due between March 18, 2020 and June 29, 2020, even in the absence of a specific relief request.

In addition, under the ministerial orders announced on August 31, 2020, the one-year time limit for making late-filed objection requests has itself been extended. Time limits for making relief requests that otherwise would have expired between March 13, 2020 and September 13, 2020, were extended by the earlier of six months of the normal relief request deadline, or December 31, 2020. The same extension was also applied to the delay within which a taxpayer or registrant may contest before the Tax Court of Canada a refusal by the Minister to grant such an extension.

Bankruptcy and Insolvency Matters

As of July 30, 2020, the suspension of statutory time limits in relation to proceedings before a court under the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* was lifted by the Minister of Innovation, Science and Industry.

Corporate Matters

On July 31, 2020, the Minister of Innovation, Science and Industry issued an order extending statutory deadlines under the *Canada Business Corporations Act* and the *Canada Not-for-profit Corporations Act* for calling the annual meeting and presenting financial statements for federally incorporated corporations, not-for-profit corporations and cooperatives. The order is retroactive to March 13, 2020, and ends on December 31, 2020. Corporations automatically qualify for the extensions and do not need to apply to Corporations Canada.

Pursuant to the order, the time for calling an annual meeting is extended by the earlier of (i) 21 months after the previous annual meeting and no more than 12 months after the last financial year-end; or (ii) December 31, 2020. Moreover, directors may now present financial statements to shareholders or members at the annual meeting no more than 12 months after the organization's last financial year-end. This extends the usual requirement by six months.

Investment Canada Act

Several time periods for the national security review process under the *Investment Canada Act* were also extended by the Minister of Innovation, Science and Industry's order dated July 31, 2020. For our commentary, see [National Security Review Timelines for Foreign Investments in Canada Temporarily Extended Due to COVID-19](#).

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