

UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

Interprovincial Enforcement of Tax Judgments

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Context

[1] At the Annual Conference held in St. John's in August 2005, Frédérique Sabourin presented a paper entitled ***Reciprocal enforcement of tax judgments***, in which she suggested the ***Reciprocal Enforcement of Tax Judgments Act*** be revived and the ***Uniform Enforcement of Canadian Judgments and Decrees Act*** (UECJDA) be amended to expressly exclude tax judgments and orders from its scope of application.

[2] During the ensuing discussions of the committee of jurisdictional representatives, it was argued by some that tax judgments given by Canadian courts are already covered by the definition of "Canadian judgment" appearing in section 1 of the UECJDA and therefore are within its purview. It was agreed that the question would best be investigated further.

[3] A preliminary review of the case law would allow for the summary of the common law revenue rule as "no country ever takes notice of the revenue laws of another"¹. The rationale behind the rule would seem to be embedded in the notion of sovereignty. Given that a refusal to enforce a foreign tax judgment is based on regard for the sovereignty of nations, it is difficult to pursue that reasoning in Canada when dealing with the enforcement of such judgments between the Canadian provinces and territories.

[4] A review of the law on the enforcement of Canadian judgments leads inevitably to the Supreme Court of Canada decision in ***Hunt*** which has confirmed that the character of the Canadian constitutional scheme "calls for the courts in each province to give "full faith and credit" to the judgments of the courts of sister provinces"². As a consequence, it is quite possible that the court of a province is already constitutionally bound to recognize a tax judgment of a court in another jurisdiction in Canada.

[5] That being said, in view of the special treatment generally given to tax judgments, it is recommended that any existing doubt regarding the enforcement of Canadian tax judgments be removed by amending section 1 of the UECJDA to specifically include tax judgments.

Impact for Québec

[6] An amendment along those lines is of definite interest to Québec. As it is, "while Québec collects its own taxes and on occasion relies on tax judgments, it is the federal government that performs this task for the other provinces and territories through Canadian intergovernmental agreements; tax judgments are given by the Federal Court and therefore are enforceable throughout Canada"³.

[7] The article in the **Civil Code** providing for reciprocity in the recognition and enforcement of tax judgments cannot be applied. It reads as follows:

3162. A Québec authority recognizes and enforces the obligations resulting from the taxation laws of foreign countries in which the obligations resulting from the taxation laws of Québec are recognized and enforced.

[8] For their part, the other provinces and territories of Canada have each enacted a provision dealing with the reciprocal enforcement of judgments under an income tax statute of another province or territory, except that the application solely to "participating provinces"⁴ operates to exclude Québec. Furthermore, in some instances, the provision is narrowed to apply to personal but not than corporate income tax, as is the case in Alberta for example. Lastly, in no circumstances does the provision apply to judgments under other tax statutes such as one creating a consumption tax.

[9] Because it is not a party to such agreements, Québec when collecting tax through the courts in the province consequently cannot have a tax judgment enforced in other Canadian provinces or territories.

[10] The adoption of the proposed amendment to the UECJDA by the provinces and territories in Canada would for Québec be tantamount to the adoption of reciprocity provisions, and accordingly would allow their courts to recognize and enforce tax judgments obtained in Québec and vice versa.

[11] As a further point, an amendment to the text of the UECJDA should expressly provide for the definition of judgment to include a certificate to be registered in the court in relation to an amount payable under a tax statute, and for the certificate to have the same effect as a judgment from the court. Such a certificate exists in section 223 of the **Income Tax Act**⁵ which deals with amounts payable by a person under that Act or various other Acts⁶.

[12] Also important for Québec is to have the UECJDA apply, despite the rule in section 11, to tax judgments before the coming into force of the proposed amendment to section 1, even though the party concerned by the enforcement measures did not take part in the proceeding.

[13] The new rule would enable the Government of Québec to recover amounts owing to it but currently unrecoverable because there is no provision for reciprocity in the tax statutes of the other provinces and territories. Judgments obtained in the absence of the

party concerned by the enforcement measures are for the most part certificates for an amount payable under a tax law, with the person affected being able to contest the assessment of the amount.

[14] The effect of the proposed amendments would be to cover a broader spectrum than is currently the case under the tax judgment agreements with the Canadian government and the reciprocal enforcement provisions drafted into each province's or territory's income tax statute. All tax judgments would then become enforceable throughout Canada, including certificates for amounts payable, and the other provinces and territories in Canada would be able to have tax judgments given in their courts recognized and enforced in Québec.

Recommendations

[15] The definition of "Canadian judgment" in section 1 of the UECJDA should be amended to provide that the Act applies to tax judgments, which includes certificates registered in respect of an amount payable under a tax law that have the same effect as a judgment.

[16] Section 11 of the UECJDA should be amended to provide that the UECJDA applies to judgments obtained before its coming into force if the judgment is for the recovery of an amount payable under a tax law, including a certificate registered in respect of an amount payable under a tax law, the certificate having the same the effect as a judgment.

Annex – Certificate for an amount payable / certificat pour un montant payable

British-Columbia: Income Tax Act, RSBC, c. 215

Application of federal provisions — certificates

50. (1) Section 223 (2) to (4) of the federal Act applies for the purposes of this Act.

(2) If a collection agreement is in effect, subsection (1) does not apply, but the federal minister may proceed under section 223 of the federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

Canada : Income Tax Act, Loi de l'impôt sur le revenu, R.S.C. 1985, c.1 (5th Supp.)

Collection

223. (1) For the purposes of subsection 223(2), an "amount payable" by a person means any or all of

- (a) an amount payable under this Act by the person;
- (b) an amount payable under the Employment Insurance Act by the person;
- (b.1) an amount payable under the Unemployment Insurance Act by the person;
- (c) an amount payable under the Canada Pension Plan by the person; and
- (d) an amount payable by the person under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.

(2) An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.

(3) On production to the Federal Court, a certificate made under subsection 223(2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

(4) All reasonable costs and charges incurred or paid in respect of the registration in the Court of a certificate made under subsection 223(2) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

[...]

Recouvrement

223. (1) Pour l'application du paragraphe (2), le montant payable par une personne peut être constitué d'un ou plusieurs des montants suivants:

- a) un montant payable par elle en application de la présente loi;
- b) un montant payable par elle en application de la Loi sur l'assurance-emploi;
- b.1) un montant payable en application de la Loi sur l'assurance-chômage;
- c) un montant payable par elle en application du Régime de pensions du Canada;
- d) un montant payable par elle en application d'une loi provinciale et que le ministre doit recouvrer aux termes d'un accord conclu par le ministre des Finances pour le recouvrement des impôts payables à la province en vertu de cette loi.

(2) Le ministre peut, par certificat, attester qu'un montant ou une partie de montant payable par une personne -- appelée "débiteur" au présent article -- mais qui est impayé est un montant payable par elle.

(3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit les lois visées au paragraphe (1) en application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

(4) Les frais et dépens raisonnables engagés ou payés en vue de l'enregistrement à la Cour fédérale d'un certificat fait en application du paragraphe (2) ou de l'exécution des procédures de recouvrement du montant attesté dans le certificat sont recouvrables de la même manière que s'ils avaient été inclus dans ce montant au moment de l'enregistrement du certificat.

[...]

Manitoba: Income Tax Act, Loi de l'impôt sur le revenu, C.C.S.M., c. I10

Certification of amount payable

39. (1) Subsections 223(1) to (4) of the federal Act, other than paragraphs 223(1)(b), (c) and (d), apply for the purposes of this Act with respect to any amount payable by a person under this Act that the Minister of National Revenue may not collect pursuant to a collection agreement.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the minister may proceed under section 223 of the federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

Attestation du montant payable

39. (1) Les paragraphes 223(1) à (4) de la loi fédérale, à l'exclusion des alinéas 223(1)b), c) et d), s'appliquent aux fins que prévoit la présente loi à l'égard de tout montant qu'une personne doit payer en vertu de celle-ci et que le ministre du Revenu national ne peut percevoir au titre d'un arrangement relatif à la perception.

(2) Lorsqu'un arrangement relatif à la perception est en vigueur, le paragraphe (1) ne s'applique pas. Toutefois, le ministre peut agir conformément à l'article 223 de la loi fédérale afin de percevoir tout montant payable par un contribuable en vertu de la présente loi.

New-Brunswick : Income Tax Act, Loi de l'impôt sur le revenu, S. N. B., c. I-2

Certificates

31. (1) Paragraph 223(1)(a) and subsections 223(2) to (4) of the Federal Act apply for the purposes of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Minister of Finance may proceed under section 223 of the Federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

Certificats

31. (1) L'alinéa 223(1)a) et les paragraphes 223(2) à (4) de la loi fédérale s'appliquent aux fins de la présente loi.

(2) Lorsqu'un arrangement relatif à la perception est en vigueur, le paragraphe (1) ne s'applique pas, mais le ministre des Finances peut agir en vertu de l'article 223 de la loi fédérale afin de percevoir tout montant payable en vertu de la présente loi par un contribuable.

Newfoundland & Labrador: Income Tax Act, S.N.L., c. I-1.1

Certificates

70. Subsection 223(1), except paragraphs (b), (c) and (d), and subsections 223(2) to (4) of the federal Act apply for the purpose of this Act with respect to an amount payable by a person under this Act that the Minister of National Revenue may not collect under a collection agreement.

Northwest Territories: Income Tax Act, Loi de l'impôt sur le revenu, R.S.N.W.T., c. I-1

Incorporation of federal provisions respecting certificates

35. (1) Paragraph 223(1)(d) and subsections 223(2) to (4) of the federal Act apply for the purposes of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Commissioner may proceed under section 223 of the federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

Incorporation des dispositions de la loi fédérale concernant les certificats

35. (1) L'alinéa 223(1)d) et les paragraphes 223(2) à (4) de la loi fédérale s'appliquent pour les fins de la présente loi.

(2) Lorsqu'un accord de perception est conclu, le paragraphe (1) ne s'applique pas. Cependant, le commissaire peut procéder en vertu de l'article 223 de la loi fédérale pour recouvrer les montants payables en vertu de la présente loi par un contribuable.

Nova-Scotia: Income Tax Act, R.S.N.S., c. 217

Application of certain Federal Act provisions

82. (1) Subsection 223(1), except paragraphs (b), (b.1), (c) and (d) thereof, and subsections 223(2) to (4) of the Federal Act apply for the purpose of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Minister may proceed pursuant to section 223 of the Federal Act for the purpose of collecting any amount payable pursuant to this Act by a taxpayer.

Nunavut : Consolidation of Income Tax Act, Codification administrative de la Loi de l'impôt sur le revenu, R.S.N.W.T., c. I-1

Incorporation of federal provisions respecting certificates

35. (1) Paragraph 223(1)(d) and subsections 223(2) to (4) of the federal Act apply for the purposes of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Commissioner may proceed under section 223 of the federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

(3) For the purposes of subsection (1), the Commissioner, on the recommendation of the Minister responsible for this Act, may make regulations to enable the enforcement in the Territories of judgments in respect of taxes in agreeing provinces.

Incorporation des dispositions de la loi fédérale concernant les certificats

35. (1) L'alinéa 223(1)d) et les paragraphes 223(2) à (4) de la loi fédérale s'appliquent pour les fins de la présente loi.

(2) Lorsqu'un accord de perception est conclu, le paragraphe (1) ne s'applique pas. Cependant, le commissaire peut procéder en vertu de l'article 223 de la loi fédérale pour recouvrer les montants payables en vertu de la présente loi par un contribuable.

(3) Pour l'application du paragraphe (1), le commissaire, sur recommandation du ministre responsable de la présente loi, peut prendre les règlements nécessaires pour permettre l'exécution dans les territoires des jugements rendus en matière d'impôt dans les provinces participantes.

Ontario : Income Tax Act, Loi de l'impôt sur le revenu, R.S.O., c. I.2

Certificate of amount payable

31. (1) An amount payable under this Act by a person (in this section referred to as a "debtor") that has not been paid, or any part of an amount payable under this Act by the debtor that has not been paid, may be certified by the Minister as an amount payable by the debtor.

(2) On production to the Superior Court of Justice, a certificate made under subsection (1) in respect of a debtor shall be registered in the court and when so registered has the same effect, and all steps may be taken thereon as if the certificate were a judgment obtained in the court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by law and, for the purposes of any such steps, the certificate shall be deemed to be a judgment of the court against the debtor for a debt due to Her Majesty in right of Ontario, enforceable in the amount certified plus interest thereon to the day of payment as provided by law.

(3) All reasonable costs and charges incurred or paid in respect of the registration in the court of a certificate made under subsection (1) or in respect of any steps taken to collect an amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

(4) Where a collection agreement is in effect, subsections (1) to (3) do not apply, but the Minister may proceed under section 223 of the Federal Act for the purpose of collecting any amount payable under this Act by a taxpayer.

Certificat

31. (1) Le ministre peut, par certificat, attester qu'un montant ou une partie d'un montant payable en application de la présente loi par une personne (appelée «débiteur» au présent article) mais qui est impayé est un montant payable par elle.

(2) Sur production à la Cour supérieure de justice, un certificat fait en application du paragraphe (1) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit la loi, et toutes les mesures peuvent être prises à la faveur du certificat comme s'il s'agissait d'un tel jugement. Aux fins de ces mesures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du chef de l'Ontario du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit la loi.

(3) Les frais et dépens raisonnables engagés ou payés en vue de l'enregistrement à la Cour d'un certificat fait en application du paragraphe (1) ou de l'exécution des mesures de recouvrement du montant attesté

dans le certificat sont recouvrables de la même manière que s'ils avaient été inclus dans ce montant au moment de l'enregistrement du certificat.

(4) Si un accord de perception est en vigueur, les paragraphes (1) à (3) ne s'appliquent pas. Toutefois, le ministre peut se prévaloir de l'article 223 de la loi fédérale afin de recouvrer un montant payable en application de la présente loi par un contribuable.

Prince-Edward-Island: Income Tax Act, R.S.P.E.I., c. I-1

Certificate regarding amount payable

65. (1) Subsection 223(1), except paragraphs (b),(b.1),(c) and (d) thereof, and subsections 223(2) to (4) of the Federal Act apply for the purposes of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Minister may proceed pursuant to section 223 of the Federal Act for the purpose of collecting any amount payable pursuant to this Act by a taxpayer.

Québec: An Act Respecting the Ministère du Revenu, Loi sur le ministère du Revenu, L.R.Q., c. M-31

Certificate

13. When an amount exigible under a fiscal law is not paid, the Minister may issue a certificate attesting the exigibility of the debt and the amount owing; that certificate shall be proof of the exigibility of the debt.

Such certificate may be issued by the Minister at any time as soon as the debt becomes exigible.

When that certificate is filed in the office of the competent court, the clerk shall enter on the back of the certificate the date of its filing and shall render judgment in favour of the Deputy Minister for the amount contemplated in the certificate and for costs against the person bound to pay the debt concerned.

Such judgment shall be equivalent to a judgment rendered by a competent court and shall have all effects thereof, except in respect of interest on the amount granted, which shall be computed at the rate fixed in section 28 and capitalized daily.

Certificat

13. Lorsqu'un montant exigible en vertu d'une loi fiscale n'est pas payé, le ministre peut délivrer un certificat attestant l'exigibilité de la dette et le montant dû; ce certificat est une preuve de l'exigibilité de la dette.

Ce certificat peut être délivré par le ministre en tout temps dès que la dette devient exigible.

Lorsqu'un tel certificat est produit au greffe du tribunal compétent, le greffier inscrit au dos du certificat la date de sa production et rend jugement en faveur du sous-ministre pour le montant prévu au certificat et pour les dépens, contre la personne tenue au paiement de la dette en cause.

Ce jugement équivaut à un jugement rendu par le tribunal compétent et en a tous les effets, sauf à l'égard des intérêts sur le montant accordé, lesquels se calculent au taux fixé à l'article 28 et se capitalisent quotidiennement.

Saskatchewan: Income Tax Act, R.S.S., c. I-2

Certificates

35. (1) Subsections 223(2) to (4) of the Federal Act apply, with any necessary modification, for the purposes of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Minister of Finance may proceed pursuant to section 223 of the Federal Act for the purpose of collecting any amount payable pursuant to this Act by a taxpayer.

Yukon: Income Tax Act, Loi de l'impôt sur le revenu, R.S.Y., c. 118

Certificates of amount payable

43. Subsection 223(1), except paragraphs (b), (c) and (d) thereof, and subsections 223(2) to (4) of the federal Act apply for the purposes of this Act with respect to any amount payable by a person under this Act that the Canada Customs and Revenue Agency may not collect pursuant to a collection agreement.

Certificat attestant un montant payable

43. Le paragraphe 223(1), à l'exception des alinéas b), c) et d), et les paragraphes 223(2) à (4) de la loi fédérale s'appliquent aux fins de la présente loi à l'égard de tout montant payable par une personne en application de la présente loi que l'Agence des douanes et du revenu du Canada ne peut percevoir en vertu d'un accord de perception.

¹ The author would like to thank Lisa Parker, Articling Student, Ontario Ministry of the Attorney General - Policy Division for her research on the common law revenue rule. However, the views and recommendations expressed in this paper do not represent those of the Ontario Ministry of the Attorney General.

² **Hunt v. T&N PLC**, [1993] 4 S.C.R. 289, page 324.

³ Sabourin, Frédérique, **Reciprocal enforcement of tax judgments**, ULCC August 2005, par. 3.

⁴ A "participating province" is a province having entered into an agreement with the Government of Canada pursuant to which that government will collect all tax payable under the province's income tax statute and remit the sums collected to the province.

⁵ R.S.C. 1985, c.1 (5th Supp.).

⁶ Each province and territory other than Alberta has a similar provision in its income tax statute. See the Annex – **Certificate for an amount payable**.