

BETWEEN:

REDPATH SUGAR LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion heard on November 17, 2025, at Toronto, Ontario

Before: The Honourable Justice Joanna Hill

Appearances:

Counsel for the Appellant: Mark Tonkovich  
Jeffrey Shafer  
Bryant Godkin

Counsel for the Respondent: Pascal Tétrault  
Grace Jothiraj

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**ORDER**

Further to the attached Reasons, the Respondent's motion to amend its Amended Reply, pursuant to section 54 of the *Tax Court of Canada Rules (General Procedure)*, is granted as follows:

1. The Amended Amended Reply to the Notice of Appeal attached as Schedule "A" to the Respondent's Notice of Motion dated November 7, 2025, shall be deemed to have been filed with the Court as of the date of this order.
2. The Appellant is entitled to costs on the motion and costs in any event of the cause with respect to additional pre-trial steps required because of the amendment. The amounts shall be determined after consideration of the parties' written submissions, not exceeding 15 pages. The Appellant shall file

its written submissions on costs, on or before January 23, 2026, and the Respondent shall file its written submissions on costs, on or before February 2, 2026.

Signed this 27th day of November 2025.

“Joanna Hill”

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Hill J.

BETWEEN:

REDPATH SUGAR LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR ORDER**

Hill J.

#### **A. Introduction**

[1] The Minister of National Revenue applied the transfer pricing recharacterization rules in paragraphs 247(2)(b) and (d) of the *Income Tax Act* to cross-border financing transactions entered into by the Appellant, its former parent company, and another subsidiary holding company. The reassessments at issue denied interest deductions claimed by the Appellant related to a \$100 million loan.

[2] The Respondent seeks to amend its pleading to rely on the traditional transfer pricing rules in paragraphs 247(2)(a) and (c), in the alternative. The amendments consist of three paragraphs pleading an additional fact that the arm's length interest rate for the borrowed money was 0%, as well as an alternative issue and grounds relied on in this regard.

[3] The Respondent relies on section 54 of the *Tax Court of Canada Rules (General Procedure)* and subsection 152(9) of the *Income Tax Act* and argues that the common law test to allow the amendments has been met.

[4] I agree that the Respondent has satisfied this test. However, due to the timing of the Respondent's motion, the Appellant is entitled to costs on the motion and costs

in any event of the cause with respect to additional pre-trial steps required because of the amendment.

## **B. Background**

[5] The Minister reassessed the Appellant for the 2013, 2014, and 2015 taxation years to deny interest deductions claimed based on a transfer pricing recharacterization of a loan as an equity investment in the Appellant.<sup>1</sup> The Appellant filed its appeal to this Court on September 29, 2021, before the Minister rendered a decision in response to its Notices of Objection.

[6] The Respondent filed a Reply to the Notice of Appeal on January 10, 2022, relying solely on the transfer pricing provisions in paragraphs 247(2)(b) and (d). On January 31, 2022, the Respondent amended its Reply to include an alternative argument that the interest was not deductible because the loan was not used to earn income, as required by paragraph 20(1)(c) of the *Income Tax Act*.

[7] The Appellant filed an Answer on February 22, 2022.

### **(1) The Appellant’s Rule 58 motion**

[8] On July 1, 2022, the Appellant filed a Stage 1 Rule 58 motion for the determination of the following question before the hearing of the appeal (“**Rule 58 motion**”):

Do the Transactions that are the focus of this appeal satisfy the condition precedent in subparagraph 247(2)(b)(i) – that is, that they would not have been entered into between persons dealing at arm’s length – such that paragraph 247(2)(d) could properly apply in this case?<sup>2</sup>

[9] The Appellant argued that if this question were to be answered in its favour, then only the separate issue regarding the application of paragraph 20(1)(c) would need to be determined at trial.<sup>3</sup> The Appellant further stated that the scope of the trial

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<sup>1</sup> The Minister also assessed the Appellant a penalty under subsection 247(3) and issued Part XIII assessments for withholding tax for a resulting deemed dividend. Those Part XIII assessments are also under appeal.

<sup>2</sup> Appellant’s Rule 58 Notice of Motion, footnotes omitted and emphasis in original.

<sup>3</sup> Appellant’s Rule 58 Notice of Motion, para 4.

(including document disclosure and discoveries) would be “substantially reduced” even if the question were to be determined in the Respondent’s favour.

[10] The Rule 58 motion was heard on August 18, 2022. The Court adjourned the motion *sine die* and required the parties to report back to the Court with a timetable to complete discoveries.<sup>4</sup> After the parties completed discoveries in 2024, the Appellant wrote to the Court to confirm that it wished to proceed with the Rule 58 motion rather than setting the appeal down for trial.

[11] However, the resumption of the Rule 58 motion was delayed because of the retirement of the presiding judge on October 31, 2024. Further to a case management conference call held on December 20, 2024, the parties agreed to have the Rule 58 motion determined by a new judge, based on the transcript of the first hearing and any additional submissions.<sup>5</sup> The Rule 58 hearing resumed on April 2, 2025, and a decision in this regard is under reserve as of the date of these Reasons.<sup>6</sup>

## **(2) The Respondent’s motion to amend**

[12] On July 17, 2025, the Respondent wrote to the Court requesting a hearing date for a motion to amend the Amended Reply to add an alternative transfer pricing argument under paragraphs 247(2)(a) and (c). The Respondent filed its Notice of Motion with a proposed Amended Amended Reply, on November 7, 2025, within the deadline required under Rule 67(6) for the hearing scheduled on November 17, 2025. The proposed amendments are the following three paragraphs:

10.1 The AGC further states the following additional facts in support of the reassessments under appeal:

...

c) in the alternative and to the extent that parties dealing at arm’s length would have entered into the Series of Transactions, which the AGC denies, at all times, the arm’s length interest rate for the money Redpath borrowed from ASR as part of the Series of Transactions was 0%.

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<sup>4</sup> Order issued by Justice Patrick Boyle, dated September 29, 2022.

<sup>5</sup> Order dated February 6, 2025.

<sup>6</sup> Further to the Order dated April 4, 2025, the Appellant made additional written submissions regarding the scope of the transactions at issue on April 18, 2025, and the Respondent responded by letter dated April 24, 2025.

11. The issues are whether:

...

e) in the further alternative, to the extent that parties dealing at arm's length would have entered into the Series of Transactions, the terms and conditions made or imposed, in respect of the Series of Transactions, between Redpath and ASR differed from those that would have been made between persons dealing at arm's length, pursuant to s. 247(2)(a) of the Act, such that the arm's length interest rate on the money Redpath borrowed from ASR was 0%, pursuant to s. 247(2)(c) of the Act.

15.2 In the further alternative, to the extent that parties dealing at arm's length would have entered into the Series of Transactions, the terms and conditions made or imposed between Redpath and ASR in respect of the series of transactions differed from those that would have been made between persons dealing at arm's length within the meaning of s. 247(2)(a) of the Act. Had ASR and Redpath been dealing at arm's length, the arm's length interest rate for the money Redpath borrowed from ASR would have been 0%, pursuant to s. 247(2)(c) of the Act.

[13] The Respondent did not file an affidavit in support of its motion. Instead, counsel for the Respondent informed the Court at the hearing that the decision to amend was made after speaking with its experts, and that they advised the Appellant and asked for its consent to the amendment in "early June".

[14] The Appellant filed a motion record outlining the procedural history of the file, including details regarding its outstanding Rule 58 motion. The Appellant also filed excerpts from the examination for discovery of the Respondent's nominee and the Respondent's answers to undertakings, advisements, and follow-up questions. Those excerpts outline that the Respondent refused to answer questions related to the paragraphs 247(2)(a) and (c) analysis conducted and ultimately not pursued by the Canada Revenue Agency at audit.<sup>7</sup> The Respondent refused these questions and undertakings on the basis of relevance because the pleadings defined the transfer pricing issue solely in relation to paragraphs 247(2)(b) and (d).

### **C. Analysis**

[15] The parties agree that the test to be applied is that an amendment to a pleading should be allowed at any stage of a proceeding if it (a) assists the Court in determining the real questions in controversy, (b) does not result in an injustice to

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<sup>7</sup> Appellant's Responding Motion Record dated November 14, 2025, Tabs 3 & 4.

the other party that cannot be compensated by costs, and (c) serves the interests of justice.<sup>8</sup>

[16] The Respondent has met this test within the parameters outlined by the Federal Court of Appeal and as applied by this Court in numerous instances.<sup>9</sup>

[17] The proposed amendments will assist the Court in determining the real question in controversy because they invoke the other assessing position available under the transfer pricing provisions of the *Income Tax Act*. Those provisions address issues related to transactions between a Canadian taxpayer and a non-arm's length person in another lower tax jurisdiction.<sup>10</sup> Subsection 247(2) provides for two types of adjustments in this regard. The Minister reassessed the Appellant based on paragraphs (b) and (d) and now seeks to rely on (a) and (c) as an alternative argument.

[18] As argued by the Respondent, both positions are related because they involve the arm's length principle. The alternative argument addresses the same issue from a different perspective, based on the same relevant facts and transactions.<sup>11</sup> The Minister's position remains that the Appellant is not entitled to the interest deduction because of the circular flow of funds in the transactions at issue.

[19] The proposed amendments do not result in an injustice to the Appellant that cannot be compensated by costs. There is no impending trial date that will be delayed. There are no radical changes such as unrelated new arguments or assumptions of fact, or withdrawal of admissions. The Respondent will have the onus to support the alternative argument and prove the sole additional fact that the arm's length interest rate was 0%. The Respondent also has agreed that it should contribute to the Appellant's costs for additional examination for discovery.<sup>12</sup>

[20] The interests of justice are served by the amendment. I disagree with the Appellant's argument that the factors from *Continental Bank Leasing Corp.* are

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<sup>8</sup> *Polarstat Inc. v HMTK*, 2023 FCA 247, paras 3 & 8.

<sup>9</sup> The requirements of subsection 152(9) of the *Income Tax Act* also have been met. This provision is not addressed in these Reasons because the Appellant did not argue otherwise.

<sup>10</sup> See the general principles and purpose discussed at paragraphs 28-30 of *HMTQ v Cameco Corporation*, 2020 FCA 112, and paragraphs 15-16 of *Marzen Artistic Aluminum Ltd. v HMTQ*, 2016 FCA 34.

<sup>11</sup> *Terasen International Inc. v HMTQ*, 2012 TCC 408, paras 32-33.

<sup>12</sup> The Respondent suggested lump sum costs in the range of \$3,000 in this regard. The Appellant argued that this amount would be insufficient.

engaged.<sup>13</sup> Two of the Appellant’s arguments in this regard warrant consideration as follows.

**(1) The Appellant’s Rule 58 motion**

[21] While I expressed concern regarding the potential impact of the Respondent’s motion to amend on the Appellant’s outstanding Rule 58 motion, I cannot and should not take this factor into account. As of the date of these Reasons, the Appellant’s Rule 58 motion is before another judge of this Court.

[22] If either party felt that a potential amendment to the Reply would impact the outcome of that Rule 58 motion, then it was incumbent upon them to have raised the matter with that judge. Despite having ample time to do so, neither party requested an adjournment of the hearing of this motion until a decision was rendered on the Rule 58 motion.

**(2) The timing of the Respondent’s change in position**

[23] I agree with the Appellant that the Respondent failed to put its “best foot forward” in this motion. While affidavits are not always required, the Court (and perhaps the Appellant) may have been reassured by a sworn statement from the Respondent detailing the specific timing of the decision to amend. This information was relevant (a) since the Minister considered but did not pursue paragraphs 247(2)(a) and (c) when reassessing the Appellant, and (b) because of the existence of the Appellant’s Rule 58 motion, which was effectively held in abeyance until the hearing resumed in April 2025. While counsel for the Respondent stated that he contacted the Appellant in early June 2025, he did not specify when the decision to amend was made beforehand.

[24] This factor is not sufficient to deny the Respondent’s motion; however, it does weigh in favour of awarding the Appellant costs on the motion and for additional pre-trial steps that may be required as a result of the amendment.

**D. Conclusion**

[25] While I am satisfied that the Respondent has met the test to amend, I am also satisfied that the Appellant will suffer prejudice that can and should be compensated

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<sup>13</sup> The often-cited paragraph was recently reproduced and relied on by this Court in *Lux Operating Limited Partnership v HMTK*, 2024 TCC 107, para 18.

through costs. I agree with the Appellant that detailed costs submissions are required from the parties to assist in my determination of amounts in this regard.

Signed this 27th day of November 2025.

“Joanna Hill”

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Hill J.

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COURT FILE NO.: 2021-2437(IT)G  
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PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: November 17, 2025  
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DATE OF JUDGMENT: November 27, 2025

APPEARANCES:

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