Docket: 2025-693(IT)G

BETWEEN:

SECHELT HOLDINGS INC., AN AMALGAMATED CORPORATION AND CONTINUATION OF 0345689 B.C. LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on January 29, 2026, at Vancouver, British Columbia

Before: The Honourable Justice Jenna Clark

Appearances:

Counsel for the Appellant:	Kurt G. Wintermute
Counsel for the Respondent:	Anatoliy Vlasov

AMENDED ORDER

WHEREAS the Respondent brought a motion to quash the Appeal pursuant to subsections 53(3)(a) and 53(3)(b) of the *Tax Court of Canada Rules (General Procedure)* and upon review of both parties' affidavit evidence, oral submissions and written submissions;

IN ACCORDANCE with the attached Reasons for Order, it is ordered that:

1. The appeal is quashed without leave to amend. This Court has no jurisdiction over the subject matter of the appeal, and a condition precedent to instituting an appeal has not been met.

2. No costs are awarded.

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This Amended Order is issued in substitution of the Order dated March 5, 2026 to remain concurrent with the attached Amended Reasons for Order issued on March 10, 2026.

Signed this 10th day of March 2026.

"Jenna Clark"

Clark J.

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Citation: 2026 TCC 43
Date: 20260310
Docket: 2025-693(IT)G

2026 TCC 43 (CanLII)

BETWEEN:

SECHELT HOLDINGS INC., AN AMALGAMATED CORPORATION AND CONTINUATION OF 0345689 B.C. LTD.,

Appellant,

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HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR ORDER

Clark J.

[1] The Respondent brought a motion to quash Sechelt Holdings Inc.'s appeal on the basis that (1) this Court has no jurisdiction over the subject matter, and (2) a condition precedent to instituting an appeal has not been met. In the alternative, the Respondent asks this Court to strike the Notice of Appeal. In the further alternative, the Respondent asks for an extension of time to file a Reply to the Notice of Appeal.

[2] The appeal is from the Minister of National Revenue's decision not to extend time to make a late filed election. That is a discretionary decision. This Court does not have jurisdiction to interfere with an exercise of ministerial discretion. The Appellant takes issue with the process used to make the decision. The Minister conducted an audit to decide if the time would be extended. It is not for this Court to opine on the process employed by the Minister when making a discretionary decision.

[3] The Appellant argues that the Minister's decision not to reassess was a determination of a taxpayer. That decision was made as an exercise of ministerial discretion, and was not a determination giving rise to appeal rights to this Court.

I. Background

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[4] Sechelt Lighthouse Liquor Store Ltd. owned a liquor license used to operate Lighthouse Liquor. On June 11, 2021, that corporation sold the liquor store, fixtures, inventory and the liquor license. On June 15, 2021, it changed its name to 0345689 B.C. Ltd.

[5] On June 22, 2022, Sechelt Holdings Inc. acquired the shares of Gaudry Holdings Ltd. and Town Center Holdings Ltd. Those corporations operated a liquor store (and owned a liquor license) in Comox, British Columbia.

[6] On June 23, 2022, Sechelt Holdings Inc., 0345690 B.C. Ltd., Gaudry Holdings Ltd. and Town Centre Holdings Ltd. amalgamated and became Sechelt Holdings Ltd., the Appellant in this appeal. Each of the four corporations had a deemed year end of June 22, 2022.

[7] On October 24, 2022, the Appellant filed 0345689 B.C. Ltd.'s T2 return for the taxation year ending April 30, 2022 (Taxation Year). Schedule 6 of that T2 included "sale of liquor license" with proceeds of disposition of $3,200,000, and gain of $3,200,000. That T2 reported total taxes owing of $1,028,116[1].

[8] The Minister of National Revenue issued a Notice of Assessment for the Taxation Year, dated October 27, 2022. The Minister's assessment accepted the reported net balance of $1,028,116.[2]

[9] No objection was made in respect of that Notice of Assessment, and no request was made of the Minister to extend the time to object to the assessment of the Taxation Year.

[10] On January 20, 2023, the Appellant submitted to the Minister a T2 Adjustment Request. Attached to that request was an Acknowledgement of Election under s. 13(4.2) of the *Income Tax Act*[3]. The election stated that 0345689 B.C. Ltd. and Lighthouse Bay Liquor Store Ltd. agreed to jointly elect under s. 13(4.2) of the *ITA* to have s. 13(4.3) apply in respect of a June 11, 2021, disposition and acquisition of the License for $3,200,000. The election was dated

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[1] Affidavit of Margit Davis dated January 26, 2026 (Davis Affidavit), Exhibit A.
[2] Davis Affidavit, Exhibit B.
[3] *Income Tax Act*, c. 1 RSC 1985, as amended (*ITA*).

June 8, 2022, and signed by Margit Davis, Director of 0345689 Ltd. and Neil Clayton, President of Lighthouse Bay Liquor Store Ltd.[4]

[11] The Appellant relied on s. 44(1) of the *ITA* and made the election on the basis that the Comox liquor license was replacement property for the Lighthouse liquor license.

[12] The Appellant admits the election was filed late and could only be accepted by exercise of the Minister's discretion to extend the time to accept the election, pursuant to s. 220(3.2).[5]

[13] Attached to the Appellant's T2 Adjustment Request was an amended T2 return for the Taxation Year. That return reported the sale of the liquor license in the amount of $3,200,000 but also reported the license's adjusted cost base as $3,200,000, resulting in no gain.[6]

[14] On March 29, 2023, a CRA auditor wrote to the Appellant advising that the Taxation Year had been selected for audit. That letter advised that the Appellant's T2 adjustment request for the Taxation Year had been received and would be reviewed as part of the audit. That letter also stated that if the audit resulted in adjustment to the Appellant's income tax return, it would be sent a separate notice of reassessment. It advised the Appellant of its appeal rights if it disagreed with the reassessment.[7]

[15] On May 4, 2024, the Appellant's accountant submitted several documents to the Minister, including a copy of the T2 adjustment request and a copy of the replacement property election made pursuant to s. 44(1) of the *ITA*.[8] Various queries were sent and answered.[9]

[16] On October 4, 2023, the auditor sent a proposal letter to the Appellant stating, "… we propose to make the following adjustments to the income previously reported

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[4] Davis Affidavit, Exhibit C.
[5] Appellant's Written Submissions, para 5.
[6] Davis Affidavit Exhibit C.
[7] Affidavit of Brian Wang dated January 13, 2026 (Wang Affidavit), Exhibit E.
[8] Davis Affidavit, Exhibit D.
[9] Davis Affidavit, Exhibit E, F, G, H; Wang Affidavit Exhibits G, H, I, J.

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on the 2022 Corporate Income Tax Return…”. The adjustments disallowed removal of a taxable capital gain of $1,600,000.[10]

[17] The Appellant's accountants and the CRA auditor continued to correspond, and on May 16, 2024, the auditor sent a letter stating, “…. We therefore propose to make the following adjustments to the income previously reported on the 2022 Corporate Income Tax Return….. Add: disallowed removal of taxable capital gain s. 38(a) of *ITA* $1,600,000.”

[18] The May 16, 2024, letter went on to state, “We are proposing to add taxable capital gains deducted in the amount of $1,600,000 in the Taxation Year as the liquor license voluntarily disposed of by the taxpayer does not meet the conditions under subsection 44(1)(b) – a former business property. Therefore section 44 – exchange of property cannot be applied.”[11]

[19] The May 16, 2024, letter gives reasons as to why the Minister has taken the position that s. 44(1) of the *ITA* does not apply to the Appellant, including stating “Consequently the liquor license voluntarily disposed by the taxpayer does not meet the conditions and section 44 – exchange of property cannot be applied.”[12]

[20] On August 28, 2024, the CRA auditor wrote a further letter to the Appellant stating, “… we have made the following final adjustments to the net income you previously reported…. Add: disallowed removal of taxable capital gain subsection 38(a) of the ITA $1,600,000.” The letter went on to state, “We will send you a Notice of Reassessment to tell you the amount of taxes owing, with the interest to the date of the assessment.”[13]

[21] No notice was sent.

[22] The August 28, 2024, letter was appended to the Affidavit of Brian Wang, the team leader referenced in that letter. Mr. Wang's affidavit states that the auditor advised him that due to an oversight, the wrong template was used. The letters sent to the Appellant should have stated that the Minister could not accept the T2 adjustment request and late-filed election. Mr. Wang's affidavit states that the

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[10] Affidavit of Brian Wang, Exhibit K.
[11] Wang Affidavit, Exhibit N.
[12] Davis Affidavit, Exhibit D.
[13] Wang Affidavit, Exhibit O.

reasons given for not accepting the requests would have been identical to the ones set out in the May 16, 2024, letter.[14]

[23] On November 26, 2024, the Appellant filed a Notice of Objection for the Taxation Year.[15]

[24] On February 20, 2025, the Minister sent a letter advising that as the Appellant did not file the objection within 90 days from the date of the Notice of Assessment dated October 27, 2022, it could not be accepted. "No extension of time would be granted."[16]

[25] On April 11, 2025, the Appellant filed a Notice of Appeal to this Court.

II. **Parties' Positions**

*(1) **Respondent's Position***

[26] The Respondent moves under paragraph 53(3)(a) of the *Tax Court of Canada Rules (General Procedure),* seeking an Order quashing this appeal on the basis that this Court has no jurisdiction over the subject matter. The Respondent's position is that the Appellant is attempting to appeal from the Minister's refusal to accept the late filed election. This is a discretionary decision made pursuant to s. 220(3.2) of the *ITA,* and therefore beyond this Court's jurisdiction.

[27] The Respondent also moves under paragraph 53(3)(b) of the Rules on the basis that a condition precedent to instituting an appeal has not been met. The Respondent argues that the only assessment of the Taxation Year was made on October 27, 2022, and the Appellant neither objected nor sought an extension of time to object to that assessment.

[14] Wang Affidavit, subpara 3(p).
[15] Wang Affidavit Exhibit P.
[16] Wang Affidavit, Exhibit Q.

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*(2) **Appellant's Position***

[28] The Appellant's position is that the Minister allowed the late filed election and T2 adjustment request. The Appellant argues that the Minister's letters referencing the adjustment requests were tantamount to an assessment.[17]

[29] The Appellant submits that the audit required the Minister to determine application of s. 44(1) of the *ITA*. Such an exercise was an assessment that followed the exercise of discretion. There was an assessing action that entitles the Appellant to appeal to this Court to determine the correctness of the Minister's application of s. 44. The Appellant argues that the August 28, 2023, letter is a "determination of a taxpayer" that gives rise to appeal rights to this Court by virtue of subsections 220(3.4) and 165(1.1) of the *ITA*.

III. **Analysis**

(1) The discretionary decision was made in the context of the audit

[30] The Minister advised the Appellant by letter dated March 29, 2023, that the T2 adjustment request would be reviewed during audit.[18]

[31] Although subsequent letters reference disallowance of adjustments, the Minister did not at any time change the assessment of the Appellant's tax liability, communicated to the Appellant by letter dated October 27, 2022.

[32] I do not take issue with the Appellant's argument that had the Minister decided to extend the time for making the election and then proceeded to decide if s. 44 of the *ITA* applied, it would have a right to appeal to this Court. However, it is not my place to opine on *how* the Minister ought to make discretionary decisions. It is clear from the record that the Minister chose to make the discretionary decision during the audit of the Taxation Year. It is the Minister's assessment, and not the audit, that gives right to appeal to this Court.

[33] The Appellant points out that s. 165(1.1) provides that a determination can give rise to right to appeal to this Court. However, the August 28, 2024, letter was

[17] Appellant's Written Submissions, para 5.
[18] Wang Affidavit, Exhibit E.

not a determination of a taxpayer. The Minister advised the Appellant that the discretionary request would be considered during the audit. The Minister's conclusion was that the late filed election would not be accepted and the T2 adjustment request was rejected.

(2) Section 220 grants the Minister discretionary authority to extend time to make an election, culminating in an assessment

[34] Section 220 of the *ITA* is part of taxpayer relief provisions, and applications made under s. 220(3.2) are subject to judicial review.[19]

[35] Section 220 of the *ITA* delegates authority to the Commissioner of Revenue to exercise all the powers and perform the duties of the Minister under the *ITA*. Subsection 220(2) extends the delegation of authority to officers, clerks and employees as are necessary to administer and enforce the *ITA*.

[36] Subsection 220(3.2) of the *ITA* gives the Minister (or officers, clerks and employees of the CRA, by virtue of s. 220(2)) authority to extend the time for making an election:

> **s. 220 (3.2)** The Minister may extend the time for making an election or grant permission to amend or revoke an election if
>
> **(a)** the election was otherwise required to be made by a taxpayer or by a partnership, under a prescribed provision, on or before a day in a taxation year of the taxpayer (or in the case of a partnership, a fiscal period of the partnership); and
>
> **(b)** the taxpayer or the partnership applies, on or before the day that is ten calendar years after the end of the taxation year or the fiscal period, to the Minister for that extension or permission.

[19] *Johnston Family 1991 Trust v Canada,* [1999] FCJ No 1157 at para 30, 62, 64; *Muscillo et al v HMQ*, 98 DTC 1548 at para 13; *Orsini Family Trust v Revenue Canada*, 96 DTC 6347; *Sixgraph Informatique Ltee v Canada,* [2004] FCJ no 953 at 13, 14; *Imax Corp v Canada,* 20255 FC 1698; *Haleem v Canada*, [2024] TCJ No 115 at 24 and 25.

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[37] The decision as to whether to extend time to make an election is discretionary. This is evident from the use of the word "may"[20] as well as the placement of the provision in section 220, which generally deals with discretionary matters.

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[38] Elections made pursuant to s. 44(1) of the *ITA* are prescribed provisions for the purposes of s. 220(3.2)(a) and (b) of the *ITA*.[21]

[39] Subsection 220(3.3) of the *ITA* provides that where the Minister has extended the time for making an election, the election shall be deemed to have been made on the day on or before which the election was otherwise required to be made:

> *Date of late election, amended election or revocation*
>
> **s. 220 (3.3)** Where, under subsection 220(3.2), the Minister has extended the time for making an election or granted permission to amend or revoke an election,
>
> **(a)** the election or the amended election, as the case may be, shall be deemed to have been made on the day on or before which the election was otherwise required to be made and in the manner in which the election was otherwise required to be made, and, in the case of an amendment to an election, that election shall be deemed, otherwise than for the purposes of this section, never to have been made; and
>
> **(b)** the election that was revoked shall be deemed, otherwise than for the purposes of this section, never to have been made.

[40] Subsection 220(3.4) of the *ITA* permits the Minister to assess tax notwithstanding limitation periods to assess or reassess a late filed election:

> *Assessments*
>
> **s. 220 (3.4)** Notwithstanding subsections 152(4), 152(4.01), 152(4.1) and 152(5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year that began before the day an

[20] Halsbury's Laws of Canada – Administrative Law (2022 Reissue), V.2.(1).
[21] *Income Tax Regulations*, CRC c. 945, s. 600.

> application is made under subsection 220(3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection 220(3.3).

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[41] The Appellant argues that this provision enables it to appeal from a determination. I note that this provision applies only when the Minister has allowed a late filed election, amended election or revocation as referred to in s. 220(3.3) of the *ITA*. It applies when an assessment is necessary to implement the election referred to in s. 220(3.3) where the Minister has extended the time making the election.

[42] Subsection 220(3.4) of the *ITA* does not apply if the Minister has not extended the time for making an election or granted permission to amend or revoke an election. Therefore, the Appellant's argument that s. 220(3.4) provides an avenue for appeal to this Court when the Minister 'determines' there will be no adjustment to a late-filed election is not supported by the legislation.

[43] Subsection 220(3.5) of the *ITA* states that where the Minister extends the time for making an election or grants permission to amend or revoke an election, the taxpayer is liable to a penalty:

> *Penalty for late filed, amended or revoked elections*
>
> **s. 220(3.5)** Where, on application by a taxpayer or a partnership, the Minister extends the time for making an election or grants permission to amend or revoke an election (other than an extension or permission under subsection (3.201)), the taxpayer or the partnership, as the case may be, is liable to a penalty equal to the lesser of
>
> **(a)** $8,000, and
>
> **(b)** the product obtained when $100 is multiplied by the number of complete months from the day on or before which the election was required to be made to the day the application was made in a form satisfactory to the Minister.

[44] Subsection 220(3.6) of the *ITA* requires the Minister to assess the penalty with all due dispatch. No penalty was assessed in this case. The Respondent states that this is further evidence that the Minister did not extend the time for the late filed election.

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[45] The Minister decides if the time for filing an election will be extended. If it is, an assessment/reassessment is triggered pursuant to ss. 220(3.3) and 220(3.4). In this case, the Minister did not decide to extend the time for filing an election, ss. 220(3.3) and 220(3.4) were not triggered, and there was no reassessment.

[46] The Minister's March 29, 2023, letter establishes that the Minister used the audit process to drive the decision to reject the Appellant's late filed election. It is apparent from the May 16, 2022, and August 28, 2024, letters that the Minister decided not to reassess the October 27, 2022 assessment.

[47] The decision not to reassess the Taxation Year is the decision giving rise to this appeal. That decision was the conclusion of the Minster's s. 220(3.2) process.

[48] The Appellant argues that the letters dated October 4, 2023, May 16, 2024 and August 28, 2024 constituted proposal letters. The Appellant relies on the decision of this Court in *Ihama-Anthony v The Queen*, in support of its assertion that an assessment need not necessarily be a "notice of assessment",

> "Like Justice Woods in *Presaud*, I am of the view that a notice of objection prepared in response to a proposal letter, which informs a taxpayer that a reassessment is about to be issued may, if validly served on the Chief of Appeals, constitute a valid notice of objection in respect of the reassessment when it is subsequently issued."[22]

[49] The operative words in this excerpt are "in respect of the reassessment when it is subsequently issued." The authority stands for the proposition that a notice of objection could be made in response to a proposal letter and still be considered valid in respect of the eventually issued reassessment.

[50] In this case, there was no reassessment. *Ihama-Anthony* does not stand for the proposition that a taxpayer may object to a proposal letter when there is no corresponding adjustment of tax. An assessment is the actual amount a taxpayer is called upon to pay. In this case, the proposal letters did not advise of a change to the

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[22] *Ihama-Anthony v The Queen*, 2018 TCC 262 at para 28.

amount the Appellant was called upon to pay. The October 27, 2022, assessment stood unchanged.

[51] The decision communicated in the August 28, 2024, letter was the result of the review of the T2 adjustment request and the request for the late filed election. This was a discretionary decision made pursuant to s. 220(3.2) of the *ITA*.

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(3) The August 28, 2024 letter does not give rise to a right to appeal to this Court

[52] Subsection 44(1) of the *ITA* enables a taxpayer to defer a capital gain when capital property is disposed of and a replacement property is acquired within a particular period of time.

[53] The Appellant asserts that s. 165(1.1) of the *ITA* applies to determinations made by the Minister including that an election will be rejected.

[54] Subsection 165(1) and (1.1) state:

> *Objections to assessment*
>
> **s. 165 (1)** A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,
>
> **(a)** if the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a graduated rate estate for the year, on or before the later of
>
> **(i)** the day that is one year after the taxpayer's filing-due date for the year, and
>
> **(ii)** the day that is 90 days after the day of sending of the notice of assessment; and
>
> **(b)** in any other case, on or before the day that is 90 days after the day of sending of the notice of assessment.

Limitation of right to object to assessments or determinations

(1.1) Notwithstanding subsection 165(1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 161.1(7), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection 165(3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph 165(1.1)(a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to 152(5),

the taxpayer may object to the assessment or determination within 90 days after the day of sending of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), 152(1.8)(b) or 152(1.8)(c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

[55] The Respondent points to s. 220(3.4) of the *ITA* as support that the only avenue to appeal, once an election has been late filed, is if the election is allowed

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and there is a subsequent assessment or reassessment. Only then would s. 165(1.1) come into play.

[56] The Appellant points to the language of s. 165(1.1) of the *ITA* as referring to a “determination made in respect of a taxpayer” as support for its position that the Minister’s decision not to assess or reassess in accordance with a late filed election is a determination.

[57] The fact that some of the provisions referenced in subsection 165(1.1) of the *ITA* can result in a determination does not mean that all the provisions can result in a determination. We must look at each provision independently to conclude if the provision contemplates a determination that triggers appeal rights.

[58] Subsection 220(3.4) of the *ITA* does not contemplate a determination of a taxpayer. It applies only when the Minister accepts a late filed election and must reassess to give effect to that decision. The provision does not create a right to appeal to this Court when the Minister declines to extend time to make the late filed election.

[59] The CRA letter of March 29, 2023, states that the Appellant’s T2 adjustment request would be reviewed during the audit.[23] Although subsequent letters stated that the Minister would make adjustments, no adjustments were ever made.

[60] In *Furling v R*,[24] this Court concluded that the Minister’s decision not to allow a T1 adjustment request was not a “determination” that gave rise to a right to appeal. In that case, the Appellant believed CRA official agreed with his request, which was ultimately denied. This Court reiterated that a decision to deny a T1 adjustment request is a discretionary decision, and remedy from that decision is beyond the jurisdiction of this Court.

[61] The question in that case was whether a decision regarding a discretionary decision a determination for the purpose of s. is 165(1.1). This Court concluded that a T1 adjustment request was not a determination contemplated by s. 152(4.3) of the *ITA*. That provision was designed to require the Minister to issue consequential reassessments to conform with changes that are made in an assessment or a decision

[23] Exhibit N of the Affidavit of Brian Wang.
[24] *Furling v R*, 2014 TCC 69.

to on an appeal. As he was not seeking conformity with an assessment or a decision to appeal, the subsection had no application.

[62] In this case, a determination is not contemplated by s. 220(3.4) of the *ITA*. As with s. 152(4.2), the provision was designed to require the Minister to issue consequential reassessments to conform with changes required once the Minister permits a late filed election (or amended election revocation).

(4) The Tax Court does not have jurisdiction over the Minister's discretionary decisions

[63] The Appellant relies on the Supreme Court of Canada decision in *Iris Technologies Inc v Canada*,[25] in support of its position that the Minister's audit crossed from discretionary consideration to assessment. It argues that its appeal relates specifically to the Minister's determination regarding the application and interpretation of s. 44(1) of the *ITA*, and not the discretionary decision to allow the late-filed election. The Appellant argues that as its appeal involves substantive issues concerning interpretation and application of the *ITA*, the Minister does not maintain ministerial discretion.[26]

[64] *Iris Technologies* deals with the "proper contours of the dividing line between the exclusive jurisdiction of the Tax Court to review the correctness of a tax assessment by a *de novo* procedure on appeal and the jurisdiction of the Federal Court in tax matters."[27] The decision stands, *inter alia*, for the proposition that jurisdiction over the correctness of an assessment falls within the Tax Court's jurisdiction, while jurisdiction over review of discretionary decision making falls to the Federal Court. A collateral attack on correctness of an assessment should not be brought under the guise of a judicial review application.

[65] In this case, the decision to accept or reject the late election falls squarely within the Minister's discretionary decision-making authority. A taxpayer may not appeal to this Court until, or if, an assessment of tax liability following the exercise of discretionary authority is made pursuant to s. 220(3.4) of the *ITA*.

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[25] *Iris Technologies Inc v Canada*, [2024] SCJ No 24.
[26] Appellant's Written Submissions para 50 and 51.
[27] Appellant's Written Submissions at para 7.

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[66] In *Iris Technologies*, the question was whether the taxpayer was bringing a judicial review application with the purpose of attacking the correctness of the Minister's assessment of tax.[28] In this case, there was no s. 220(3.4) assessment.

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[67] This is not a situation where the parties agree there was an assessment and the question is how to parse jurisdiction between the Federal Court and Tax Court. Here, the question is whether there was an assessment at all. *Iris Technologies* does not assist with this analysis.

[68] What *Iris Technologies* does contribute to the analysis is its discussion concerning what constitutes an "assessment". The Supreme Court referenced *Okalta Oils Ltd v MNR*[29] when stating that an assessment is the actual amount of tax a taxpayer is called upon to pay, and not the method or process used to determine tax liability.

[69] The Supreme Court in *Dow Chemical* was asked to conclude that the Minister's decision not to make a downward transfer pricing adjustment pursuant to s. 247(10) of the *ITA* impacted the Minister's assessment, and therefore a challenge to that decision fell within the jurisdiction of the Tax Court. The majority disagreed with that argument and found that as the decision to deny the request was within the Minister's discretionary authority. As there was no express right of appeal to the Tax Court, the Federal Court was the proper forum to seek review of an exercise of ministerial discretion.[30]

[70] This Court considered the impact of *Dow Chemical* in the context of the Minister's refusal to accept a late filed form pursuant to s. 220(3.2) in *Haleem v Canada,* stating that *Dow Chemical* stands for the proposition that the jurisdiction of this Court is limited to reviewing the correctness of an assessment, which is "a purely non-discretionary determination of the taxpayer's liability."[31] Only the Federal Court has jurisdiction to review the Minister's discretionary decision to apply, or not apply, s. 220(3.2) of the *ITA*.

[71] The Appellant attempts to distinguish *Dow Chemical* on the basis that s. 247(10) of the *ITA* constituted a 'one-step process' to determine and assess tax

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[28] *Iris Technologies*, at paras 43 and 96.
[29] *Okalta Oils Ltd v MNR,* [1955] SCR 824; *Iris Technologies* at para 48
[30] *Dow Chemical* at para 121.
[31] *Dow Chemical* at para 43 and 46; *Haleem v Canada,* [2024] TCJ No. 115.

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liability, while it maintains the CRA followed a 'two-step process'. The Appellant argues the Minister first decided to extend the time to file the election. That decision was an exercise of discretion and beyond the jurisdiction of this Court. The Appellant argues the Minister then proceeded to audit the election, resulting in a determination that is subject to appeal in this Court.

[72] The Minister's May 16, 2024, and August 28, 2024, letters are, at best, misleading. A taxpayer reading those letters could reasonably be of the view that the Minister had engaged in an audit and a Notice of Reassessment would be issued and appeal rights would be triggered. The letters support the Appellant's argument that the Minister engaged in a two-step process. However, the Minister also sent the March 29, 2023, letter advising the Appellant that the T2 adjustment request would be considered during the audit.

[73] The Minister's actions, including issuing misleading letters, do not grant jurisdiction to this Court.[32] This Court's jurisdiction is conferred by statute.[33]

[74] As this appeal is from the Minister's decision not to reassess to give effect to the late filed election and the T2 adjustment request, the Appellant is seeking relief that cannot be granted by this Court. Section 171 of the *ITA* sets out the relief that can be granted on appeal, and that relief is restricted to vacating an assessment, varying the assessment, or referring the assessment back to the Minister for reconsideration and reassessment. As discussed by the Federal Court of Appeal in *Meglobal Canada ULC v Canada*, there is no authority to refer a matter back to the Minister for reconsideration of an issue that may lead to a reassessment, if the issue in question was an exercise of discretion.[34]

(5) The Appellant did not meet a condition precedent to appealing to this Court

[75] The Respondent moves under paragraph 53(2)(b) of the *Rules* on the basis that a condition precedent, namely a Notice of Objection to a reassessment or determination was not delivered to the Minister 90 days after service of the most recent reassessment or determination pursuant to s. 165(1) of the *ITA*, nor was an

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[32] *Ereiser v R*, 2013 FCA 20 at para 31; *Simard v HMQ*, 2009 FCA 379 at para 19.
[33] *Goldstein v HMQ*, 96 DTC 1029; *Adams v Canada,* 2023 TCC 86.
[34] *Meglobal Canada Ulc v Canada*, 2026 FCA 24 at para 12.

application for an extension of time made to the Minister pursuant to s. 166.1 of the *ITA*.

[76] This Court does not have jurisdiction to hear appeals when a condition precedent has not been met, namely an objection has not been serviced under s.165 of the *ITA*.[35]

[77] The Appellant maintains that the August 28, 2024, letter was a "determination of a taxpayer", and as such triggered appeal rights pursuant to s. 165(1.1). The August 28, 2024, letter communicated the Minister's decision not to extend time to file an election. It did not trigger appeal rights to this Court.

[78] In this situation, ss. 220(3.2), 220(3.3) and 220(3.4) of the *ITA* could lead to only two results. Either the Minister declined to extend the time to file an election and no reassessment would be made, or the Minister would extend the time to file the election and there would be an assessment or reassessment. An assessment is an amount owing. It is the result of the process, not the process itself.[36]

[79] The only assessment made in respect of the Taxation Year was made October 27, 2022. The Appellant did not object to that assessment, and an application was not made seeking an extension of the time to object.

[80] Subsection 169(1) of the *ITA* outlines the circumstances in which a taxpayer may appeal to this Court, and states,

> 169 (1) Where a taxpayer has served notice of objection to an assessment under s. 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either
>
> **(a)** the Minister has confirmed the assessment or reassessed, or
>
> **(b)** 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

[35] *Anderson v Canada*, 2024 TCC 72.
[36] *Canada v Consumers' Gas Coi*, [1987] 2 FC 60 (FCA); *Bruner v R*, 2003 FCA 54.

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> but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

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[81] A taxpayer does not have a right to appeal to this Court if they have not filed a Notice of Objection in accordance with s. 165 of the *ITA*.[37]

[82] In light of the Appellant's admission that no objection to the October 27, 2022, assessment was made, and my finding that the August 28, 2024, letter was not a determination in respect of a taxpayer, I conclude that this appeal must be quashed pursuant to s. 53(3)(b) of the *Rules*.

IV. **Conclusion**

[83] Subsection 53(3) of the *Rules* states that on application by the Respondent, the Court may quash an appeal if (a) the Court has no jurisdiction over the subject matter of the appeal, or (b) a condition precedent to instituting an appeal has not been met.

[84] The outcome of such a motion is of singular importance to an Appellant, and I am mindful that the test is a high standard, and it must be plain and obvious that the pleading discloses no reasonable cause of action.[38]

[85] The only assessment, reassessment or determination made by the Minister in respect of the Taxation Year was made on October 27, 2022. No objection was made to that assessment. A condition precedent was not met and therefore this Court does not have jurisdiction to hear the appeal.

[86] The appeal is from communication of a discretionary decision of the Minister not to extend the deadline to make an election and to accept an amended T2.[39] This Court has no jurisdiction over such subject matter.

[87] The Appellant submits that it cannot be Parliament's intent for a taxpayer to have no recourse to an audit that ends in denial of a requested election or

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[37] *Lapointe-Fisher Nursing Home Ltd v MNR,* 86 DET 1357.
[38] *Canada v ConocoPhillips Canada Resource Corp*, 2014 FCA 297, para 2.
[39] *Costabile v Canada*, [2008] FCJ No 1173.

T2 adjustment. This position presupposes that end of the audit was not part of the discretionary decision-making process. In this case, the Minister used the audit process to determine the result of extending time to make the election, before deciding to extend the time. Recourse therefore lies in a judicial review of that process and decision.

[88] The election was signed June 8, 2022, and yet 0345689 B.C. Ltd. filed its tax return on October 24, 2022. It is apparent that the Appellant intended, even before amalgamation, to make the replacement property election. I was given no reason why the Appellant could not have objected to the October 27, 2022, assessment, thus protecting its appeal rights should the Minister decline to accept the late filed election and T2 adjustment request.

[89] The motion is allowed and the Appellant's appeal for the Taxation Year is quashed. No costs are awarded.

These Amended Reasons for Order are issued in substitution of the Reasons for Order dated March 5, 2026 in order to correct the date underscored in paragraph 25 hereof.

Signed this 10th day of March 2026.

"Jenna Clark"

Clark J.

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CITATION:	2026 TCC 43
COURT FILE NO.:	2025-693(IT)G
STYLE OF CAUSE:	SECHELT HOLDINGS INC., AN AMALGAMATED CORPORATION AND CONTINUATION OF 0345689 B.C. LTD. AND HIS MAJESTY THE KING
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	January 29, 2026
AMENDED REASONS FOR ORDER BY:	The Honourable Justice Jenna Clark
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