

SHAAE (2001) MASTER LIMITED PARTNERSHIP (“MLP”)
TAX DISPUTE WITH CANADA REVENUE AGENCY (“CRA”)
UPDATE FEBRUARY 5, 2013

The oral discovery of CRA’s representative, David Duff, commenced on January 22, 2013 in Ottawa. The discovery was scheduled to continue for one week. However, following testimony under oath from Mr. Duff on January 22nd, counsel (Heenan Blaikie LLP) filed a Notice of Motion pursuant to section 58 of the *Tax Court of Canada Rules (General Procedure)*, requesting the Court determine a question which may dispose of all of the proceeding.

The grounds for the Motion may be summarized as follows:

- The Minister issued the Notice of Determination to the MLP in March of 2005;
- The Minister can only proceed by way of a Notice of Determination against a partnership, not an individual taxpayer. If the taxpayer is not a partnership, the Minister must proceed by way of reassessment.
- The Reply to the Notice of Appeal filed by the Minister stated that the MLP was not a partnership at law;
- During oral discovery on January 22, 2013, CRA’s representative confirmed that the Reply accurately reflected the Minister’s position that the MLP was not a partnership at law;
- According to ss.152(1.8) of the Tax Act, once the Minister has concluded that the MLP is not a partnership, the Minister may issue notices of reassessment to the members of the MLP (i.e. the investors) in place of the Notice of Determination issued to the MLP, within one year of such conclusion;
- More than one year has passed since the Minister concluded that the MLP was not a partnership;
- As the Minister has concluded that the MLP is not a partnership, the Minister is no longer permitted to proceed further under the Notice of Determination.
- As more than one year has passed since the Minister concluded that the MLP was not a partnership, the Minister cannot issue any Notices of Reassessment to the MLP’s investors.
- Accordingly, the Notice of Determination must be vacated and the Minister is now time barred from contesting the original assessments.

The Court may decline to hear the Motion, or may decide to hear it. Counsel is waiting to hear back from the Court. If the Motion is heard by the Court, it is expected that the Crown will make its own submissions. Meanwhile, the discoveries of Mr. Duff and Mr. Darc have been adjourned.

Further updates will follow on this website.