MANAGING TAX ERRORS: PREVENTION, REMEDIAL TOOLS, AND BEST PRACTICES

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Introduction:

This paper considers the corrective tools and best practices available when a tax error is identified in advance of an audit by the Canada Revenue Agency ("CRA"), with particular emphasis on the distinction between administrative correction, voluntary disclosure, equitable remedies, and corporate law mechanisms to correct tax errors. This paper also considers the practical implications of jurisprudence in the field, and the importance of early intervention to preserve remedial options.

Tax errors are an unfortunate reality of tax practice. They may arise from incomplete factual instructions, misunderstandings regarding complex statutory provisions, implementation failures in transactional planning, historic non-compliance issues discovered during client onboarding, or issues identified in due diligence and post-closing review. In many cases, the error is only discovered after the relevant filing has been made or the transaction has been completed. At that point, the taxpayer and their advisors must determine not only the nature of the error and how it was identified, but also whether any corrective options remain available to them.

The timing of the above analysis is often decisive. Where an error is identified before CRA has commenced an audit or investigation, the taxpayer may still have access to ordinary administrative correction mechanisms, discretionary relief under federal and provincial Voluntary Disclosure Programs, and, in limited circumstances, legal or corporate law remedies that address defects in implementation. Once CRA enforcement activity has begun, however, the range of available remedies narrows significantly. In many cases, the taxpayer is then left to pursue only the ordinary assessment, objection, and appeal process.

Recent jurisprudence has also interpreted the distinction between correcting an error and retroactively rewriting history with tax in mind. In particular, the Supreme Court of Canada ("SCC") decision in *Canada (Attorney General) v. Collins Family Trust* ("*Collins*") confirms that equitable remedies cannot generally be used to relieve taxpayers from the ordinary tax consequences of transactions they freely undertook.[2] *Collins* has materially altered the remedial landscape. It reinforces the need for practitioners to distinguish carefully between

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[2] *Canada (Attorney General) v. Collins Family Trust,* 2022 SCC 26.

reporting errors, documentation errors, and errors in the underlying legal relationships created by the parties.

This paper focuses on the correction side of tax error management. It reviews why early correction matters, surveys the principal pre-audit remedial tools, considers the increasingly constrained role of equitable remedies, discusses the potential use of corporate law mechanisms to address implementation defects, and highlights the need to consider provincial voluntary disclosure regimes as part of a complete correction strategy.

Why Early Correction Matters:

The discovery of a tax error immediately raises a threshold question: is the matter still in the pre-audit stage, or has CRA already taken any steps that may limit discretionary relief? Before an audit begins, a taxpayer may still be able to correct a filing administratively or seek relief under the Voluntary Disclosures Program ("VDP"). Once CRA has initiated compliance action in respect of the issue, access to those remedies may be reduced or lost altogether. Types of compliance actions by CRA include a Demand to File, Notice of Assessment or Reassessment, Notice of Determination, Request or Requirement for Information, Collections Letter or an Audit Letter.

The importance of early correction is both practical and strategic. First, prompt action may materially reduce financial exposure by minimizing penalties and interest. Second, it preserves access to discretionary programs whose availability depends on the taxpayer coming forward before CRA enforcement overtakes the issue. Delay may move a taxpayer from a more favourable relief category to a less favourable one, or eliminate access to relief entirely. Further, the sooner an issue is identified, the easier it is to gather documents, assemble factual evidence, identify affected years or reporting periods, and assess whether related parties are implicated.

Pre-Audit Remedial Tools:

In the pre-audit context, taxpayers may still have access to administrative correction mechanisms, including amended filings, adjustment requests and discretionary relief under the VDP program.

Amended Filings

Where the issue is essentially one of inaccurate reporting, and where the relevant statute and administrative procedures permit correction, this route may offer the simplest and fastest solution. Amended filings and adjustment requests are the most straightforward path for taxpayers seeking to correct a return.

For income tax matters, this may involve a T1 adjustment request or an amended T2 filing. For GST/HST matters, it may involve correcting a reporting error through an adjustment in a subsequent return or requesting a reassessment where permitted. In appropriate cases, these mechanisms allow the taxpayer to regularize their filing position without invoking a formal disclosure program.

However, amended filings have important limits. They do not necessarily eliminate penalties or interest that have already accrued, and they do not provide protection from assessments. They are also constrained by statutory deadlines, assessment finality, and technical restrictions. Some issues cannot be corrected simply by filing an amended return, particularly where the taxpayer is attempting to make or alter an election after the fact, recover relief that is no longer available under the statute, or address a broader pattern of non-compliance spanning multiple years.

Federal VDP

The federal VDP is a program intended to encourage taxpayers to come forward voluntarily to correct errors or omissions before CRA enforcement action begins. If a VDP application is accepted, the taxpayer remains liable for the underlying tax, but may obtain full or partial relief from penalties, partial relief from interest, and protection from potential prosecution in respect of the disclosed matters.

Recent developments in the VDP framework effective October 1, 2025 underscore the need for careful procedural analysis. The post-October 1, 2025 framework is as set out in CRA IC00-1R7 and GST/HST Memorandum 16-5-1. These new frameworks contemplate different categories of relief depending on whether the disclosure is unprompted, prompted, or relates to wash transactions in the indirect tax context. The practical implication is that advisors must carefully assess all prior CRA contact, the nature of the non-compliance, and the completeness of the available factual record before deciding whether and how to proceed. Differing levels of relief are available depending on whether the VDP application is unprompted or prompted. Penalty relief and 75% interest relief is available under an unprompted application. If the application is prompted, the relief available includes gross negligence penalty relief, up to 100% relief for other penalties and 25% interest relief for all years.

The central feature of the VDP is voluntariness, although the threshold has been relaxed as a result of the new frameworks. Previously, VDP applications were not considered voluntary if the taxpayer was aware of any compliance or enforcement action against them – which included notices of audit, demands to file, examinations, investigations and contact from CRA employees. Now, taxpayers may still be eligible for relief even if the

application is somewhat "prompted", so long as the disclosure relates to a past-due reporting period, involves potential penalties or interest, and is complete. Completeness is often one of the most demanding aspects of the process. A taxpayer seeking relief must be prepared to identify the full scope of the non-compliance, provide supporting documentation, and pay the estimated liability immediately or negotiate payment arrangements.

The VDP is not available for every issue. In IC00-1R7, CRA indicates that matters including requests involving only increased credits or rebates without corresponding unreported liability, requests solely for relief from already assessed penalties or interest, or attempts to make or alter elections, may fall outside the program. As a result, the VDP should not be viewed as a universal cure. It is a targeted, discretionary remedy that must be matched carefully to the facts.

Equitable Remedies:

Rectification

Rectification has historically occupied an important place in tax litigation and tax planning, but its scope is narrow and often misunderstood. Properly utilized, rectification is not a mechanism for undoing a transaction because it produced an undesirable tax result. Rather, rectification is a remedy aimed at correcting a written instrument that fails to accurately record the parties' prior agreement. Its function is corrective, not creative.

For tax practitioners, the principal risk is that rectification may be invoked too broadly in circumstances where the real complaint is not that the documents misstate the agreement, but that the agreement itself generated unintended tax consequences. Courts have repeatedly emphasized that taxpayers are taxed based on the legal relationships they actually created, not the tax objectives they hoped to achieve. Accordingly, rectification remains potentially available only where there is clear evidence of a definite antecedent agreement that was incorrectly implemented in the documentation.

This distinction is critical in practice. If the parties agreed on one legal arrangement but the executed documents mistakenly recorded another, rectification may still be available. If, however, the parties implemented exactly what they agreed to do and later discovered that the tax consequences were unfavourable, rectification will not ordinarily assist. The remedy therefore remains relevant, but only in a narrow class of cases involving documentary error rather than transactional regret.

Rescission

Rescission is even more constrained than rectification in the tax context. Unlike rectification, rescission seeks to unwind a transaction and restore the parties to their prior position. In theory, that may appear attractive where a transaction has triggered unexpected tax liability. In practice, however, the SCC's decision in *Collins* sharply limits the availability of rescission as a tax correction tool.

The Court made clear that equitable relief cannot generally be used to avoid tax liability arising from the ordinary operation of tax statutes on transactions that taxpayers freely undertook. In other words, a taxpayer cannot ask a court to erase or reverse a completed transaction simply because the tax consequences turned out to be worse than expected. The ordinary operation of the tax statute is not, in and of itself, an unconscionable result warranting equitable intervention.

The significance of *Collins* extends beyond rescission. The decision reflects a broader judicial insistence that tax consequences must be determined by reference to the legal relationships actually created, not by reference to what the parties later wish they had done with the benefit of hindsight. For practitioners, the practical takeaway is clear: rescission is no longer a realistic mainstream corrective tool for adverse tax consequences arising from completed transactions. It should be treated primarily as a cautionary topic rather than a viable remedial strategy in most tax error cases.

In the wake of *Collins*, the circumstances where rescission may be available appear to be limited to "where it would be unconscionable or unfair to allow the common law to operate in favour of the party seeking enforcement of the transaction."[3] The decision of the majority at the SCC did not explicitly enumerate circumstances where rescission would be granted, stating what tax practitioners have heard before: "there is nothing unconscionable or unfair in the ordinary operation of tax statutes to transactions freely agreed upon."[4] In the lone dissent authored by Justice Côté, she considered alternative remedies to rescission, including a remission order granted by the Governor in Council pursuant to s. 23 of the *Financial Administration Act*, and the potential to take legal action against professional advisors. Justice Côté found that "the proposed alternative remedies are neither practical nor appropriate; both are highly unlikely to succeed."[5] In effect, Justice Côté found that rescission ought to have been allowed because there were no viable alternative remedies.

[3] *Collins,* para 11.
[4] *Collins*, para 11.
[5] *Collins*, para 94.

For a more in-depth discussion of rectification, rescission and the jurisprudence dealing with them, see Elie S. Roth, Stephen S. Ruby, and Ryan Wolfe, "Equitable Remedies in Tax Matters: The Elusive Search for Relief," in Pooja Mihailovich and John Sorensen, eds., *Tax Disputes in Canada: The Path Forward* (Toronto: Canadian Tax Foundation, 2022), 22: 617-71.

Corporate Law Mechanisms for Correcting Errors:

Although the equitable remedies discussed above have narrowed in recent years, corporate law may still provide useful tools for addressing certain implementation failures. These mechanisms are most relevant where the problem lies in defective authorization, clerical error, incomplete execution of intended steps, or the need to reorganize legal relationships prospectively after an error has been discovered.

Shareholder resolutions and director resolutions may, in appropriate circumstances, correct defects in authorization or record-keeping. For example, where a step was intended and substantively agreed upon but was not properly authorized or documented, corporate law may permit the defect to be cured. Similarly, amalgamations, reorganizations, or plans of arrangement may sometimes be used to unwind or restructure problematic arrangements on a go-forward basis.

The key distinction, however, is between correcting a genuine corporate law defect and attempting to retroactively redesign completed transactions for tax purposes. The former may be legally effective; the latter, on the other hand, is at risk of encountering the same conceptual barriers that now constrain equitable relief. A corrective corporate action may be valid under corporate law without necessarily altering the historical facts on which tax liability has already arisen.

Provincial VDP Programs

Manitoba

In Manitoba, the Taxation Division of Manitoba Finance can conduct audits under certain statutes including *The Retail Sales Tax Act* (“RST”) and *The Health and Post Secondary Education Tax Levy Act* (“HET”), among others. The Taxation Division staff maintain similar audit powers as do CRA officials. In terms of voluntary disclosure opportunities, the Taxation Division will waive penalties and will not prosecute if a taxpayer voluntarily makes a full disclosure. The requirement for a disclosure to be voluntary will not be met if disclosure arises after the Taxation Division has undertaken any form of compliance or enforcement action, including verbal notice that an audit is forthcoming.

There is no relief from interest available under a VDP in Manitoba. The taxpayer must pay all taxes owing plus accrued interest, or have a payment plan approved. If the taxpayer subsequently defaults on a payment plan, the Taxation Division maintains authority not to waive penalties and to prosecute accordingly.[6]

Saskatchewan

In Saskatchewan, the Tax Client Service Commitments and Standards Code (April 2025) sets out that the Revenue Division of the Minister of Finance has adopted "a policy of allowing tax clients to avoid prosecution and the application of penalty and interest when the taxes owing are voluntarily reported and paid in accordance with all of the following conditions:

- The disclosure must be voluntary and initiated by the individual or business. A disclosure will generally not be considered voluntary when a reporting of tax is made in response to contact made by a Finance officer.
- The disclosure must be accurate and complete. This includes filing all returns and outstanding tax for all consumption tax types payable, and the tax client must provide or allow access to any books and records related to all taxes owing.
- Payment of the taxes owing must be received within 30 days of Finance's confirmation of the amount due (when required, a reasonable payment schedule may be available by making arrangements with Finance).
- The individual or business must have an acceptable filing history."[7]

The Revenue Division notes that if an anonymous disclosure or ruling request has been made, and the tax client is audited during the period in which they made the anonymous request, they are not eligible for relief. The tax client must be identified for any relief to be granted relief, even if they are anonymous when initially filed.

The effective date of the VDP occurs only when the taxpayer has been identified.

Alberta

In Alberta, the Minister of Finance, via the Alberta Treasury Board and Finance, Tax and Revenue Administration ("TRA"), has discretionary authority to grant relief from any penalty

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[6] Tax Administration and Miscellaneous Tax Bulletin 001, *Taxation Division Audits* (June 2024), retrieved from Government of Manitoba Tax Publications https://www.gov.mb.ca/finance/taxation/pubs/bulletins/001tamta.pdf

[7] Tax Client Service Commitments and Standards Code (April 2025), retrieved from Government of Saskatchewan Publications: https://sets.saskatchewan.ca/rptp/wcm/connect/d13acef4-8935-41f3-97de-be8edf36cc49/Taxpayer+Service+Commitments+and+Standards.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-d13acef4-8935-41f3-97de-be8edf36cc49-mE81FHI

or interest under section 55.1 of the *Alberta Corporate Tax Act*. The TRA does not accept anonymous voluntary disclosures. Under Alberta's VDP, taxpayers can make an application to correct inaccurate or incomplete information, and are able to make a disclosure about information not previously reported. Alberta Corporate Tax Act Information Circular CT-3R7 notes that Alberta generally follows CRA's approach to the VDP Program as of January 2026 Information Circular CT-3R7 notes that "a corporation may apply to correct inaccurate or incomplete information, or disclose information that was not previously reported, including willful circumventions of the Act. If relief is provided by TRA under the VDP, a corporation may receive some penalty and interest relief."

The relief provided by the TRA follows the changes made to the federal VDP framework effective October 1, 2025 enacted by IC00-1R7. TRA may contact CRA for information regarding disclosure made to CRA during the same time period, but any CRA decision is not binding on the TRA. Following the federal VDP program, an unprompted application may be eligible for 75% relief from interest and 100% relief from penalties. A prompted application is eligible for 25% relief from interest and up to 100% relief from penalties.

In Alberta, if a VDP application is found to be eligible for relief under the provincial framework, gross negligence penalties will not be applied in respect of information provided in the course of the disclosure.[8]

Information Circular CT-3R7 provides examples for taxpayers of situations where relief under the provincial VDP may be considered, which include "failing to report taxable income or filing an AT1 as required, claiming ineligible expenses or tax credits, or otherwise failing to fulfill an obligation".

At the time of submitting a VDP application to the TRA, a new or amended AT1 and complete details of the disclosure must be provided. The applicant must also indicate whether a VDP application is being made to CRA in respect of the same disclosure.

In considering a VDP application, the Audit Branch will review the application. For the application to be granted, it must be:

i. complete and accurate;
ii. include sufficient supporting documentation is provided;
iii. include an error or omission with applicable interest, penalties, or both;

[8] Alberta Corporate Tax Act Information Circular CT-3R7, Corporate Income Tax Assessments, Audits and Dispute Resolution, retrieved from Government of Alberta Publications: https://open.alberta.ca/dataset/4291a112-f42a-4504-a3b8-81530e2411ba/resource/76372194-e8dd-4696-80d3-8709418c2762/download/tbf-information-circular-ct-3r7-assessments-audits-and-dispute-resolution-2026-01.pdf

iv. include information that is at least one year past due, and
v. include the payment of Alberta taxes owing and a reasonable estimation of interest payable up to date of filing the VDP.

The TRA may contact CRA if a VDP has also been filed federally. The effective date of the VDP is the day which it is granted.

The TRA notes that an application for relief may be denied in situations where the application includes insufficient supporting documentation or detail, the taxpayer does not comply with requests from the Audit Branch within the provided timeframes, or the TRA learns of additional compliance issues that were not identified in the original disclosure.

If the applicant believes that the TRA's discretion to grant relief has not been duly exercised, it can request a second administrative review by different Audit Branch staff. If the application remains unsuccessful, an application for judicial review can be filed with the Alberta Court of King's Bench within six months of the date of the decision.

Conclusion:

In summary, managing tax errors requires prompt analysis, careful procedural planning, and a clear understanding of the limits of available remedial tools. As discussed in this paper, the distinction between correcting a reporting or implementation error and attempting to retroactively alter the legal or factual reality of a completed transaction is now central to the remedial landscape. Early identification of issues remains critical, both to preserve access to administrative correction mechanisms and voluntary disclosure programs, and to maximize the taxpayer's ability to assemble the factual and documentary record necessary to support any corrective action.

The available remedies differ significantly depending on the nature of the error. In many cases, amended filings or adjustment requests may provide an efficient means of correcting inaccurate reporting. In others, the federal and provincial VDP regimes continue to offer meaningful relief where taxpayers come forward before compliance action has commenced. At the same time, recent jurisprudence, particularly the SCC decision in *Collins*, confirms that equitable remedies such as rectification and rescission are not broad instruments for escaping unintended tax consequences, but rather narrow remedies directed at specific legal defects. Corporate law mechanisms may still play an important role where the issue involves authorization failures, documentation defects, or prospective restructuring, but they likewise cannot be assumed to erase historical tax consequences already triggered by completed legal relationships.

In the prairie provinces, provincial voluntary disclosure programs vary considerably, and advisors should seek to familiarize themselves with the requisite administrative policies in each province if they are applicable to the advisor's practice.

Ultimately, effective tax error management depends less on finding a universal cure after the fact and more on early intervention, accurate characterization of the problem, and disciplined selection of the appropriate corrective pathway. As tax administration and jurisprudence continue to evolve, practitioners must remain attentive not only to the technical requirements of available remedies, but also to the broader judicial emphasis on legal certainty and finality in the tax system.