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## CORPORATE TAX PLANNING

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### STATUTORY RATIFICATION

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Mistakes in implementing tax plans are inevitable. From a policy perspective, it is appropriate to allow a taxpayer to fix mistakes in documents that lead to unintended tax consequences provided that the taxpayer does not engage in retroactive tax planning.

Currently, the most common way to fix mistakes in tax planning is to obtain a remedy by court order. While this method can be effective, the court application entails undue process in uncontested cases. This violates the proportionality principle in litigation, the goal of which is timely and affordable access to justice.

Canadian corporate statutes permit an application to an administrator to correct certain corporate slips. The scope of this administrative mechanism is too narrow to provide relief in many tax cases. Where the administrator refuses relief, the taxpayer must apply for a court order to correct the mistake, even if the change is unopposed by the Crown.

Delaware corporate law offers statutory ratification as a way to fix defective corporate acts resulting from a failure of authorization. This process corrects certain corporate slips privately. While this process could be adopted in Canada, it would not go far enough in tax cases because it would not keep all uncontested cases out of court.

Canadian legislatures should consult stakeholders to codify an appropriate legal test that would allow the correction of mistakes in tax planning by statutory ratification. For uncontested cases, statutory ratification would permit the correction of mistakes without a court application or an administrative decision.

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A streamlined process to fix mistakes in tax cases provides a multitude of benefits. The time has come to enact a broader set of tools in Canadian legislation to fix mistakes privately in uncontested tax cases.

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