



## **DECEMBER 2007**

### **NOTICE TO READER**

The following commentary has been prepared by Parker Garber & Chesney, LLP based on information available to the public on the date of publishing.

Readers are cautioned that this commentary is informational only and that any issues specific to the reader's needs be addressed with the appropriate tax professional.

The reader is cautioned that this document is not meant to provide advice specific to the reader's particular situation and that advice cannot be given in such a manner.

## **GST RATE CHANGE**

Following up on the October 30 announcement about the reduction in the GST from 6% to 5% and HST from 14% to 13%, the following are some basic items to allow for a smooth transition.

The effective date of the rate change is January 1, 2008.

For any transactions for which amounts are paid or payable on or after January 1, 2008, the effective rate will be 5% GST or 13% HST. If the amount payable was due in 2007 the old rates apply.

Allowances or reimbursements paid to employees or partners that have a deemed GST/HST component will be subject to the rate factor of 6/106 or 14/114 if the amount is paid before January 1, 2008. Allowances and reimbursements paid on or after January 1, 2008 will have a factor of 5/105 or 13/113 as applicable.

## **TAX CASES**

### **WHEN A HOTEL IS NOT A HOTEL**

Canada Revenue Agency (CRA) recently demonstrated the ridiculous lengths that they would go to in challenging a taxpayer. I am embarrassed for the Crown Attorney who had to argue the case.

Hewlett-Packard Canada Co. provided company-paid trips to various locations in Canada as rewards for meeting sales quotas and other revenue targets. The trips resulted in a taxable benefit to the employees and tax was paid on the benefit.

CRA challenged the deduction of the expense by the employer on the basis that the Income Tax Act specifically disallows expenses related to the use of a "lodge" as a business expense.

The Crown position was that a "lodge" includes any accommodation provided in a country setting. The properties involved included: Cleveland's House, Deerhurst resort, Chateau Whistler, Isaiah Tubbs Resort, Chateau Bromont, Delta Lodge at Kananaskis, Le Chateau Montebello and L'Esterel. Since the word "lodge" or "resort" was in the name of the hotels, CRA considered them to fall under the same category as a hunting or fishing lodge, the target of this expense restriction.

Fortunately sanity reigned in the ruling of the judge who found in favour of the taxpayer.

Our tax dollars at work.



## **GENERAL ISSUES**

### **TRANSFERRING ASSETS**

Many taxpayers have been taking it upon themselves to transfer assets into joint names with their children or even to transfer these assets outright to their children with the intention of avoiding probate fees. Some have even been erroneously advised that this will avoid income tax triggered on the death of a taxpayer. This is not only wrong but these transfers can cause a number of problems including triggering income tax prematurely and placing assets within the reach of creditors.

Any transfer of assets to family members is deemed to have taken place at fair market value (with the exception of spousal transfers). This would result in potential capital gains tax when putting assets into the name of children. This also affects transfers of principal residences by elderly parents to their children, assuming that they will avoid probate fees. While this can protect the asset from the 1.5% probate fee, the disposition moves the property from being a principal residence of the parent to an investment property of the child and the potential tax liability on the gain can be substantially more than the probate fees.

When placing assets in joint name the income generated by those assets, such as treasury bills and investment accounts, becomes taxable in the names of the joint owners.

Another unintended consequence is that assets placed in the name of other family members makes those assets available to creditors of those family members that could otherwise be prevented with careful wording in the will.

Transferring assets among family members should never be undertaken without a complete understanding of the tax and legal issues involved.

