



## **NOVEMBER 2007 and Mini-Budget**

### **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.

## **MINI-BUDGET**

On October 30 Finance Minister Jim Flaherty released what was in effect a mini-budget containing a wide-range of tax cuts.

### **CORPORATE TAX**

The Federal corporate rate is scheduled to fall from 22.12% to 19.5% for 2008 and to continue to fall to 15% in 2012. The small business rate will fall from 15.12% to 11% for 2008.

### **PERSONAL TAX**

The personal rate at the lowest bracket will fall from 15.5% to 15% retroactive to January 1, 2007. In addition the 2007 basic personal amount will be increased to \$9,600 and, effective for 2009, will increase to \$10,100.

### **GST**

The expected 1% drop in the GST will take affect January 1, 2008.

## **TAX CASES**

### **AUTOMOBILE EXPENSES**

Two recent decisions of the Tax Court of Canada provide some interesting issues for automobile expense claims.

The first, *Hudson v The Queen* was a situation where an employee was required by his employer to travel for employment-related purposes and the expenses were paid by the employer in the form of a per-kilometre allowance plus a fixed allowance. The employer provided his own vehicle and, when calculating his kilometres, included the drive from his home to his office. CRA disallowed the expenses for the home-to-office driving. The court found in favour of the taxpayer on the basis that the employee was required to have his vehicle available at all times while working and, as such, would have to drive the car to and from the office in order to meet his employment requirements. Therefore the acceptable kilometres included the distance to and from the office from home.

The second case is *Gauthier v The Queen* and involves an employee who was a service technician, using an employer-provided van equipped with technical equipment. CRA assessed a stand-by charge for personal use of the van which, in the opinion of the Agency, was greater than 10%. The Court ruled that since the van was not "a luxuriously equipped" vehicle it was not conducive to personal use and therefore the Minister's position was not reasonable and the taxpayer won his argument.



## **GENERAL ISSUES**

### **CRA GETS AGGRESSIVE WITH US COMPANIES**

US companies that have employees in Canada are looking for tax returns to be filed by those companies and they are assessing penalties in these cases. This is not restricted to employees based in Canada but applies to foreign employees who come to Canada to provide services on behalf of their foreign employer and if CRA can determine that the company is carrying on business here then the link may be established and tax may be exigible.

In order to establish nexus with Canada, CRA needs to show that the company has a permanent establishment in Canada or, less onerous, if the company provides services or solicits transactions, then the link may be made and tax would apply.

Further, Canadian entities are required to withhold tax on payments to non-residents that include a fee, commission or other amount in respect of services rendered in Canada. The withholding tax is 15% (and an additional 9% if the service is rendered in Quebec).

The Canadian payer is subject to penalties for not withholding and the US entity would likely receive a refund upon filing a Canadian tax return if it can demonstrate that it does not have a permanent establishment in Canada.

A non-resident employer paying non-resident employees providing services in Canada is required to withhold and remit all normal Canadian deductions and file T4 returns.

## **US TAX ISSUES**

### **CANADA – U.S. INCOME TAX CONVENTION – FIFTH PROTOCOL**

On September 21, 2007 Canada and the U.S. signed a fifth protocol to the existing tax convention. The most widely known application of this protocol is the phase-out of the withholding tax on cross-border interest payments. The withholding tax on interest paid to non-related parties will be eliminated at the beginning of the second month following the later of ratification by both countries and January 1, 2008. Draft legislation introduced by Canada eliminates the withholding tax on all non-related loans entered into on or after March 19, 2007 regardless of the delay in ratification.

For related-party transactions the withholding tax will be phased out on the following schedule: 7% in the first calendar year, 4% in the second calendar year and eliminated in the third calendar year following ratification.



These new withholding tax rules will not apply to limited liability companies (LLCs) that are treated as “look-throughs” in the U.S. These treaty benefits will also be denied to hybrid entities such as a partnership opting for the “check-the-box” treatment as a corporation in the U.S.

This may require that cross-border structures be re-examined and possibly restructured to take into account these new treaty benefits. The Protocol changes, as they relate to hybrids, will take effect in the third year following ratification, which allows some time for restructure planning.

## **FIRM NEWS**

Please welcome three additional professional staff members that have recently joined our firm. They are Inna Aronin who is working in general audit and accounting, Betty Au Yeung who is working in accounting and tax and Robert Chesney who is working in condominium audit.

