



2008 Ontario Budget and March 2008

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.

ONTARIO BUDGET 2008

The McGuinty government tabled its 2008 budget on March 25. Consistent with previous budgets by this government, it appears to have taken little action to reduce taxes or stimulate the economy of a province that was, at one time, the engine for Canada's economy but is now on the cusp of becoming a have-not province. The only upside to this situation is that Ontario may actually begin receiving equalization payments from the Federal government, for the first time in history.

CORPORATE TAX

CAPITAL TAX

The capital tax for manufacturing and resource companies will be eliminated retroactively to January 1, 2007.

TAX EXEMPTION

New corporations involved in the commercialization of intellectual property developed by Canadian universities, colleges or research institutes will have a ten-year holiday from Ontario corporation tax.

ONTARIO INNOVATION TAX CREDIT AND ONTARIO INTERACTIVE DIGITAL MEDIA TAX CREDIT

The previously established credits have been extended to higher limits enabling companies to claim additional credits.

PERSONAL TAX

SENIOR HOMEOWNERS' PROPERTY TAX CREDIT

Beginning in 2009 seniors who own their own home will be eligible to receive a credit of up to \$250 towards their 2009 property taxes. The credit will be clawed back beginning at \$35,000 for singles and \$45,000 for couples and will be totally phased out at \$50,000 for singles and \$60,000 for couples.

CONCORDANCE WITH FEDERAL INCOME TAX CHANGES

Ontario will parallel certain Federal initiatives announced in the 2008 Federal government. These will include the Tax-Free Savings Account of \$5,000 per year, changes to the Registered Education Savings Plan program, increases in the Northern Residents Deduction, expansion of the list of eligible expenses for the Medical Expense Tax Credit, extension of the capital gains exemption for donations of publicly traded securities and changes to the dividend gross-up and tax credit.



All of these changes can be viewed in our summary of the Federal Budget 2008.

CORPORATE TAX

ONTARIO CORPORATE TAX INSTALMENTS

It should be noted that, with the integration of the Ontario Corporations Tax Branch with the Canada Revenue Agency (CRA) effective for 2009, all corporate instalments for Ontario for fiscal years ending after December 31, 2008 should be remitted to CRA and not the Ministry of Finance.

GENERAL ISSUES

SHAREHOLDER AGREEMENTS

One of the most contentious issues for corporations is the matter of developing and maintaining a workable shareholder agreement. Many owners have put off the effort of preparing an agreement using the excuse that they “get along just fine” and don’t need to bother. It is precisely when they are getting along fine that they should put in the effort because it won’t work when there is a dispute.

In determining the content of a shareholder agreement it is important for the owners to consider why it is needed. Some of the most common reasons are:

- Establish rules for the management of the business, both day-to-day and long-term;
- Define the rights of the shareholders;
- Determine the responsibilities of the shareholders;
- Protect the rights of both the majority and minority shareholders;
- Place restrictions on the sale or transfer of shares;
- Outline the process for an sale or purchase of shares;
- Define the rules and circumstances for a buy-out.

When considering the content of a shareholder agreement the consideration must be given to external matters that could have an affect on the application of the agreement including corporate law, income tax issues and family law.

The agreement can outline steps for the orderly withdrawal of a shareholder and also deal with issues such as the addition of family members to the ownership group. It can also address the impact of external issues that may affect the corporate operations such as the insolvency or death of a shareholder or the impact of shareholders departing Canada.



The agreement can also deal with matters related to financing, including the financing of the buy-out.

A shareholder agreement may be one of the most important legal document impacting the corporation and care must be taken to ensure that it is properly constituted and maintained current with changes in law and tax.

REMISSION ORDER – STOCK OPTIONS

CRA has announced that it will consider special relief through the remission procedure for individuals who suffered large tax liabilities as the result of exercising stock options during the technology meltdown that triggered taxable income but no realized gains.

IN THE COURTS

DIRECTORS' LIABILITY

One of the biggest concerns for those accepting an appointment as a director of a corporation or a trustee of a trust is personal liability and how it can impact you. Directors have personal liability for amounts related to payroll deductions, GST, PST and Workers' Compensation (WSIB in Ontario).

Often times it is recommended to directors of corporations that are running into financial difficulties that they resign their position to limit the exposure. Generally speaking a director's liability has a limitation of time set within the Income Tax Act and the Excise Tax Act of two years.

Many cases are heard concerning directors' liability and the decisions go both ways, depending upon the facts of the case. If the director has made reasonable attempts to ensure that payments have been made or enquires whether payments are current this will often be found in the director's favour. Where there has been no evidence that the director has made reasonable attempts or enquiries the decision will likely go the Canada Revenue Agency.

It is in the director's own personal interest that they take the steps to protect themselves from liability.

TRUST AGREEMENTS

A recent case, *Williams v. The Queen*, outlines the dangers and pitfalls of taking shortcuts. In the immediate case the taxpayer used a trust drawn for another person for a different purpose to establish a protective trust for his own needs. Because the original document was created for another purpose a number of the clauses in it were not only, not applicable for Mr. Williams' purposes, but were diametrically opposed to what the taxpayer was trying to achieve.



This resulted in an expensive and needless waste of time in court fighting CRA. It is important that taxpayers do not turn to cookie-cutter or pre-drafted documents sometimes offered by institutions and certain organizations in the assumption that it will save legal fees. The resulting costs of establishing your rights and unwinding the problems is a great deal more than the initial set-up costs.

