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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.

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

CREDITOR PROOFING

Many clients have shown a growing interest in creditor-proofing and as the possibility of an economic downturn approaches this is a timely topic. One of the most common forms of creditor-proofing is to incorporate. This will protect the shareholders from liability except in very extreme situations and the directors will have liability protection from most creditors except for Canada Revenue Agency for payroll deductions and GST and provincial governments for PST and Workers' Compensation.

Shareholders and related parties, including related companies can further protect their investment by securing advances and loans to a corporation using either a General Security Agreement or a debenture.

Operating companies with significant assets such as real estate or equipment should consider placing those assets in a separate corporation in order to protect these valuable assets from creditors of the operating company.

While life insurance held within a corporate structure is an oft-used vehicle, consideration should be given to having the insurance held by the holding company because the proceeds from the policy, once paid into the company, become assets that can be attached by creditors.

FAMILY LAW

When creating a shareholder agreement (see March 2008 Taxing Times), family trust or a will consideration should also be given to family law issues. While a marriage contract is the best protection many couples are hesitant to approach the subject with their future spouse.

In the case of shareholders of family businesses it may be advisable to undertake a restructuring of the shares prior to the marriage and issue restricted shares to the child getting married, leaving voting control with the parents. The parent can then gift the voting shares, or a portion of them, to the child after the marriage.



This exempts the shares from the net family property, similar to shares left by bequest.

All wills should contain a “family law” clause that limits the ability of the spouse of a beneficiary to benefit from the bequest.

IN THE COURTS

REPAIRS OR CAPITAL EXPENDITURES

In *Gabriel et al v The Queen* the Tax Court dealt with the oft asked issue of when repairs and maintenance are current expenses (deductible) and when they are capital expenses (to be amortized). The Court found that items related to creating current revenue, in this case rent income, and where they are not extending the life of the building itself, these would be considered current expenses deductible in the year they have been incurred.

This judgement actually seems to extend the definition previously held that replacing existing items can be considered an expense while adding items, such as walls and doors that did not previously exist would be considered capital items.

This ruling is good for taxpayers in having more clarity in allocating repair expenses.

US TAX ISSUES

ESTATE TAX UPDATE

For 2008 the exemption available for US citizens and residents is \$2,000,000. For Canadian residents who are not US citizens or green-card holders the same exemption applies but must be pro-rated for the proportion of the estate's US assets over the world-wide estate.

The 2009 exemption is expected to increase to \$3,500,000 and the tax is to be eliminated in 2010. Beyond 2010 it is expected that a new estate tax regime will be put in place by Congress.

