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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.

PERSONAL TAX

RRSP AND RRIF LOSSES

New rules have been introduced which are of great benefit to estates and their beneficiaries. The Income Tax Act requires that, on the death of an individual, the balance of their RRSP or RRIF must be included in income at the value determined at the date of death unless a tax-free spousal rollover is available.

The problem, especially with the market trends of the past year or so has been that, by the time the financial institution has processed the liquidation of assets or the transfer to the beneficiaries the actual proceeds may be less than that reported on the terminal return.

The new rules allow the estate trustees to carry the loss back to the terminal return and recover the overpaid tax.

ONTARIO HST

After many years of refusing to take the plunge, this year's Ontario budget finally brought harmonization to the Federal and Ontario sales tax regimes (see Taxing Times – Ontario Budget 2009). There has been a great deal of hand-wringing about the coming HST and protests about the “tax-grab” by Queen's Park.

In reality, from a business perspective, this harmonization should be a boon to business and reduce administration paper work. It should also reduce prices in certain categories where, in the past, provincial sales tax was buried in the costs and marked up through each stage of the supply chain. With HST it is true that the end-user, the public, will pay the HST but we have been paying it all along and, in most cases, have also paid it more than once.

This having been said in defence of the HST, the Ontario Government has still managed to turn it into a tax grab by not reducing the rate of tax to offset the increased taxes collected from adding HST to items that were previously not taxable. When implemented in Nova Scotia and New Brunswick the rate was reduced so that taxpayers saved almost 4% over what they previously paid and in Newfoundland they saved almost 5%. In Ontario we will pay more because the Government has decided not to make a corresponding rate reduction.

TRANSITIONAL RULES

There are a great number of transitional rules that were introduced in October to deal with certain transactions that take place before the implementation date of July 1, 2010. Some transactions that take place after the announcement date of October 14, 2009 will be subject to HST rather than PST even though they take



place before July 1, 2010. This date applies mostly to business and public-service bodies that provide exempt services or a combination of taxable and exempt services and contract for supplies of goods or services after October 14, 2009 for the goods or services to be provided after June 30, 2010. In this case they will be required to self-assess the Ontario portion of the HST (8%) and remit it with the first HST return after June 30, 2010.

Transactions taking place from May 1 to June 30, 2010 for the supply of goods or services that will be provided on or after July 1, 2010 will be subject to HST.

Leases in effect before July 1, 2010 subject to PST will be replaced by the HST beginning with the implementation date.

There are many more transitional rules that may apply to the provision of goods or services that straddle the May 1 and July 1, 2010 dates that may have an impact on your business transactions. It is recommended that you obtain professional advice before committing to transactions that may be affected by HST.

IN THE COURTS

GST NUMBERS

In what is likely an undue burden for businesses across Canada, the Federal Court of Appeal decision in *Systematix Technology* is adding to that burden. The case involved a business claiming input tax credits from payments made to suppliers. During the course of an audit CRA discovered that some suppliers were using either invalid or cancelled GST numbers. Although the taxpayer corporation had assumed that the GST was properly charged to them and claimed the ITC accordingly the court ruled that the taxpayer had not done its due diligence by confirming the GST registration numbers with CRA.

Interestingly enough, during the hearing it was admitted by CRA that, at the time of these transactions, there was no formal way of confirming GST business numbers. Now there is a system available through the CRA website to confirm registration numbers.

