



SUMMER 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.

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

GENERAL RATE INCOME POOL (GRIP)

The changes made in the dividend rates for dividends received under certain circumstances (generally Canadian public company dividends) have resulted in enhanced tax credits for individual taxpayers. When these dividends are received in private companies, whether they are investment holding companies or active business, the dividends received go into an account called GRIP and can be paid out to the shareholders while maintaining the enhanced dividend tax credits. It appears that the expected reductions in various provincial corporate tax rates will reduce the tax benefits in the coming years and so it may be advisable to consider clearing the GRIP accounts during the 2009 tax year.

The taxation of GRIP dividends during 2008 will be very beneficial for taxpayers with no other source of income. The enhanced tax credit can result in a tax-free distribution of dividends of up to \$51,000 in Ontario.

IN THE COURTS

ENTERTAINMENT EXPENSES

The Federal Court of Appeals reversed the Tax Court in Stapley concerning the deductibility of gift certificates and tickets where the taxpayer has not had any use of the items personally. In this case the taxpayer had given the certificates and tickets as gifts to customers and there was no dispute that he had no personal enjoyment or consumption related to these gifts. The temporary relief from the Tax Court decision was short-lived as the Federal Court found that the plain language of the Act did not require the taxpayer to have personal use in order for the restriction on deductibility to apply. CRA will extend this to such things as bottles of wine given at Christmas. The Grinch still lives on.



US TAX ISSUES

DOING BUSINESS IN THE US

Many Canadian companies are selling their products to US customers without considering the complex rules of cross-border enterprise. Some have incorporated US subsidiaries, often in states like Delaware, while others have operated as a branch of the Canadian company in order to allow for the absorption of start-up costs back up to the Canadian company.

The problems with both of these methods can result in tax costs that cannot be offset in Canada and also avoid the permanent establishment rules. A potential alternative is for the Canadian operating company (Canopco) to incorporate a US limited liability company (USLLC). If Canopco sells its product to USLLC which, in turn, sells to the US customers, the USLLC can be treated as a disregarded entity in the US. This means that it will not pay federal income tax because the income is considered to have been earned by Canopco and is protected under the tax treaty.

In Canada the income earned by the USLLC will be considered Canadian income since the company would be considered a resident of Canada and will only be taxed in Canada.

This structure does not protect from taxation by the individual states where the USLLC has operations or sales. Some states follow the federal tax treatment while others do not so it takes careful planning to avoid falling into a state tax-trap. In addition, many states have very low nexus requirements to require the collection of state sales taxes so once more, careful planning is necessary.

