

The Lazy Penalty

Congratulations, you did it! This year you made sure to get your taxes done early. So early in fact that you were enjoying a seat on the patio with a cold beverage this April the 30th watching the crowds rushing in to the post office while the parking attendants lingered outside with ticket book in hand.

While enjoying your beverage, your thoughts came back to those slips that came in after you filed, but it was only for a couple of hundred dollars and surely the Canada Revenue Agency (CRA) won't know that you didn't include those amounts when you filed. Besides, how bad could it be? I hate to ruin your evening on the patio but the CRA will know and the penalties can be severe.

Every slip you receive (T3, T4, T5, etc) is also sent to the CRA. This information is kept on file and once the CRA has issued your notice of assessment they run their matching program. When a discrepancy is found the CRA investigates and issues a Notice of Reassessment based on the total income you should have reported. If there is a balance owing they will charge interest on this and if you have failed to report income in any of the three prior years they will also assess a penalty. The CRA penalty is 10% of this year's unreported income and there could be an additional provincial penalty equal to the CRA penalty.

There is a way to avoid these penalties. Provided you aren't too lazy to act in a timely manner, you can request CRA to adjust your return to include the missing slips. Provided this request is filed before the CRA issues the Notice of Reassessment you will avoid the penalty charges. Then you can use the money you saved by avoiding the penalty to



have another cold beverage on that patio you so enjoyed on April 30th.

For more information on CRA penalties please contact your Welch LLP representative.



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INSIDE

Recent Changes Affecting Not-For-Profit (NFPO) Organizations.....pg2

Tax Free Savings Account Update.....pg2

PE GAAP Update.....pg3

HST – Last Minute Updates.....pg3

Estate Planning With Life Insurance.....pg4

Recent Changes Affecting Not-For-Profit (NFPO) Organizations



NFPOs have had to adapt to significant changes over the last several years and that trend does not seem to be ending anytime soon. Below, we have outlined some of the significant changes concerning GST/HST, the Canada Corporations Act and accounting standards.

We are all aware of the fact that the HST is being introduced in Ontario and British Columbia on July 1, 2010. However, what is less known is the fact that the place of supply rules are also changing. For illustrative purposes, we will use a national association who charges membership fees as an example. Under the old rules, an association would charge the 5% GST or 13% HST based on where the contract was negotiated; which was often considered to be the head office of the association. Under the new rules, the place of supply is considered to be the billing address of the member. This means that organizations must ensure that they are charging the correct tax to their members and that will vary by province.

For the approximately 19,000 NFPOs currently incorporated

under the Canada Corporations Act, current draft legislation will require these organizations to apply for corporate status under the proposed Canada Not-for-Profit Corporations Act. One of the proposed changes under this Act is for organizations to be categorized as either a “soliciting corporation” (solicits public donations or receives government funding) or as a “non-soliciting corporation”. This would result in the financial statements of high-revenue soliciting corporations requiring an audit. Medium-revenue soliciting corporations could only be subject to a review engagement if 2/3 of their members consented. Low-revenue, soliciting corporations would be subject to a review unless all of their members consented to not undertake this process.

Accounting standard setters have proposed new standards for NFPOs, which if adopted, will apply to fiscal years beginning on or after January 1, 2012. The proposed standards are outlined in two separate exposure drafts which were released in March. One standard applies to private sector NFPOs and the other applies to government controlled NFPOs. Under the proposed standards, private sector NFPOs have the option to adopt International Financial Reporting Standards (IFRS) or the proposed Not-for-Profit Standards. Government controlled NFPOs will not be able to adopt IFRS and must adopt public sector accounting standards which will incorporate existing NFPO standards.

For more information on how the new place of supply rules may affect your organization, contact Mona Tessier at Welch LLP; for more details on the Canada Corporations Act changes, contact your lawyer; and for status updates on the NFPO accounting standards, contact your Welch audit engagement partner.



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Tax Free Savings Account Update

Beginning in 2009, Canadians over the age of 17 have been able to contribute a non-deductible amount of up to \$5,000 a year to a Tax Free Savings Account (“TFSA”). Since the inception of the TFSA, aggressive tax planning strategies have been developed. In response, on October 16, 2009, the Department of Finance announced amendments to the TFSA to mitigate deliberate over-contributions and penalize individuals who intentionally abuse the TFSA program.

Draft legislation was issued on April 30, 2010 and is summarized as follows:

- ❖ All income attributed to deliberate over-contributions will be subject to the advantage rules and the tax payable on the income will be 100%;
- ❖ Asset transfers (excluding cash) between TFSAs and other accounts, both registered and non-registered will be

prohibited. The prohibition would apply to transfers enacted between accounts of the same taxpayer or that of the taxpayer and a person with whom the taxpayer does not deal at arm’s length. The advantage rules will be applied if such transactions takes place and the amounts attributed to the

- ❖ asset transfer will be taxable at 100%;
- Any income reasonably attributed to non-qualified investments or prohibited investments in a TFSA will now be subject to the advantage rules and taxable at a rate of 100%. This penalty is in addition to the 50% tax rate that is applied to the value of the non-qualified investment at the time it was
- ❖ acquired by the TFSA or the time it became unqualified; and
- Any withdrawals of amounts from deliberate over-contributions, amounts attributable to swap transactions and non-qualified and prohibited investments will not create additional TFSA contribution room for the subsequent year. For more information, please contact your Welch LLP service advisor.



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PE GAAP Update

In December 2009 the Accounting Standards Board (the Board) released new Generally Accepted Accounting Principles for Private Enterprises (PE GAAP) that will apply to private companies that are required to issue financial statements that are subject to an audit or a review. The new standards were adopted in response to a previous decision that will require Canadian public companies to adopt International Financial Reporting Standards (IFRS). The Board determined that alternate standards for private enterprises would better serve lenders and other users of private company financial statements since these users are in a position to obtain additional information from the company's management with respect to its operations. Private companies are permitted to adopt IFRS standards but we suspect this will be a rare occurrence given the cost and complexity associated with applying IFRS standards.

PE GAAP is based on existing Canadian accounting standards and as a result most elements of the standards will be familiar. Many private companies have adopted differential reporting options available under existing GAAP and these options will be retained under PE GAAP. These options will become accounting policy choices and the differential reporting nomenclature will disappear under the new standards.

The new standards will also introduce some new requirements, particularly with respect to the measurement and disclosure requirements for financial instruments. A significant change is that an investment whose price is quoted in an active market will now be required to be measured at fair value and the unrealized gain or loss will be reported on the company's income statement. Another notable change is the requirement to disclose amounts owing to governments at the end of the period

in respect of government remittances (other than income taxes).

In the year of adoption there will be a significant amount of disclosure related to details of the transition. The transition rules will also provide companies with a one time option to recognize certain assets, such as land and buildings, at their fair value as at the date of transition.

Private enterprises must adopt these new standards for periods beginning on or after January 1, 2011 and early adoption is permitted. Prior to adopting these new standards it is important to alert lenders and other financial statement users of their impact, if any. For more information on PE GAAP and its implementation please contact your Welch LLP representative.



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HST – Last Minute Updates

When the introduction of Ontario and British Columbia HST was first announced last year there was speculation regarding its implementation. The HST legislation was originally introduced in 1997 in the Maritimes. There have been few changes to those rules since that time. Given that British Columbia and Ontario are such important forces in the Canadian economy and the fact that the original implementation of HST occurred in a time when the internet was not a major factor in the business world, it was expected that the existing rules would require some refinement.

On April 30, 2010 draft regulations in respect of the place of supply of property and services were released. The place of supply rules are used to determine whether HST applies and at what rate. Previous to the proposed amendment, the rules relied mostly on the location of the supplier and where the contract was negotiated. The proposed new rules rely more heavily on the location of the customer.

Any HST/GST registrant who has customers located outside Ontario and/or provides services outside Ontario should carefully examine these new place of supply rules as changes from the current application are likely.

Other recent changes include, the province of Nova Scotia's announcement that they would be increasing the rate of the HST in that province effective July 1, 2010 from 13% to 15%.

Also, further details have been provided regarding input tax credit restrictions for businesses whose annual taxable revenues on an associated basis exceed \$10 million. Lastly, it's important to note that you may already be required to be collecting the HST even though the implementation date is not until July 1, 2010. HST must be collected on any invoices dated on or after May 1, 2010 in respect of taxable goods or services to be delivered or rendered on or after July 1, 2010.



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Estate Planning with Life Insurance

A sound estate plan should address how one's terminal tax liability will be funded. While proactive planning during one's lifetime may limit tax payable upon death, this liability may nevertheless be significant. Life insurance can be an effective tool to fund a terminal tax liability.

Life insurance proceeds will generally be a tax-free receipt and can provide an important source of funds for tax and general estate requirements. Beyond the required level of insurance, many other factors will affect the proper structuring of a life insurance arrangement.

Life insurance provides liquidity to an estate that may not otherwise be available. This can be critical where an interest in a business or real estate represents a significant proportion of one's estate. Life insurance may be the most feasible method of funding the terminal tax liability connected to non-liquid assets.

Consideration should also be given to when insurance proceeds will be required. Where assets are left to a spouse, tax may be deferred until the death of the second spouse. A joint-last-to-die policy may be

appropriate in this case since premiums are generally lower but the life insurance proceeds are available to pay the estate's tax liability when required. Alternatively, if life insurance is required to replace a person's income, then funds may be required upon the death of the first spouse.

Professional advice should be sought to determine the appropriate ownership and beneficiaries of a life insurance policy. These decisions will be based on the specific facts and become more complicated with interests in multiple corporations.

In the context of an overall estate plan, there are many uses for life insurance, including:

- ✦ funding tax;
- ✦ replacing income;
- ✦ estate equalization, particularly where there is a family business but

- not all children are actively involved;
- ✦ preservation or creation of wealth;
- ✦ buy-sell arrangements between shareholders; and
- ✦ charitable giving.

Welch LLP can provide the expertise required to make proper choices from a life insurance perspective. We can ensure that you are presented with appropriate options and that the cost of life insurance is minimized while at the same time the benefits are maximized. For more information, please contact your Welch LLP service advisor.



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