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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.

IN THE COURTS

THERE IS NO PLACE LIKE HOME

A common matter of interest, especially in these times when many people are working from home, is the issue of business mileage from a taxpayer's home office to the office of the company they work for. The Tax Court decision in *Toutov* confirms that these expenses are reasonable as the principal place of employment is the home office. CRA did not appeal the decision.

GOLFER GETS HOLE IN ONE

It has been the practice of CRA to tax the benefit of a golf club membership provided to an employee and, in most cases, there has been little argument by taxpayers. It takes a bad golfer to have the rules narrowed to the benefit of the taxpayer. In *Rachfalowski* the taxpayer was forced by his employer to accept a fully-paid membership from his employer although he was a bad golfer (isn't everyone?) and did not like the game. The taxpayer argued that the benefit was solely in favour of the employer as it was the method that the employer used to enhance the employer's image.

The Tax Court ruled that the value of the benefit was not necessarily the cost of the benefit and that the taxpayer had not received a taxable benefit as the membership was not something he enjoyed.

CRA MATH LESSON

CRA has always argued that, for purposes of the personal service business rules, the phrase in the Income Tax Act "more than 5 full-time employees" means "at least 6". The Tax Court in *489599 B.C. Ltd.* helped explain math to the Agency by determining that 5 full-time plus 2 part-time employees is "more than 5 full-time employees". This decision should cause some corporations that have been assessed as "personal service corporations" to review their payroll.



WHEN A CAPITAL GAIN IS NOT A CAPITAL GAIN

In 1338664 Ontario Ltd the court ruled that a company whose sole activity was actively trading in securities may not necessarily be capital transactions. The company had actively traded about half of its holdings while it had held the balance for longer periods of time. The decision arbitrarily determined that all trades that were held for less than one week were on account of income while the balance were considered on account of capital.

In a similar decision it was found in *Empire Paving Ltd* that an investor can have to separate and distinct strategies that could result in one being treated as a capital transaction and the other as income. It seems that the Tax Court judges are attempting to inject some kind of humane logic to the actions of taxpayers and are looking beyond the strict wording of the Income Tax Act. It will be interesting to see what the future holds.

DIRECTOR'S LIABILITY

It always a concern when someone asks you to be a corporate director because directors have personal liability exposure that will not expose officer corporate management that are not directors. Since many directors do not have operational access accorded to management they have potential liability that they may not be aware of.

Directors are liable for payroll deductions for income tax, CPP and EI, GST, Worker's Compensation and Employer Health Tax. In addition directors can be held liable for illegal actions of the corporation and for the payment of excess bonuses and dividends that could render the corporation insolvent.

If you are a director and have concerns with the management that cannot be resolved it is important that your resignation be properly registered in accordance with the appropriate Corporations Act and Regulations. Liability for tax payments usually extend for two years after resignation.

INTER-CORPORATE LOANS

Many corporations lend money within the group, especially between holding companies and their subsidiary operating companies. These holding companies are usually set up to provide creditor protection. When inter-corporate loans exist this could defeat the purpose of the protection because the funds may be exposed. In order to avoid this problem it is recommended that the lender register a General Security Agreement (GSA) for the loan. This provides the lender corporation with a preference in receiving payment from the borrower company. For existing loans that are not secured it is recommended that you repay the



existing loan and create a new one secured by the GSA. Securing an existing loan with a GSA will not necessarily provide the needed protection.

