

# TAXING TIMES NEWS FLASH



**December 17, 2004**

## 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. Parker Garber & Chesney, LLP does not ensure the accuracy of the information herein provided that may result from errors or omissions in public documents.

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.

## **INTEREST RATES 1<sup>ST</sup> QUARTER 2005**

The Canada Revenue Agency announced the revised prescribed annual interest rates for the upcoming quarter effective January 1, 2005 to March 31, 2005.

Interest on overdue taxes	7%
Interest paid on overpayments	5%
Interest calculated on shareholder benefits	3%
Interest on overdue and overpaid GST and HST	2.4333%
Interest charged on overdue Excise Tax	7%
Interest on overpaid Excise Tax	5%

## **EMPLOYMENT INSURANCE PREMIUM**

The Minister of Finance announced a reduction in the Employment Insurance contribution rate for 2005 to \$1.95 per \$100 from \$1.98 per \$100. The employer rate is also reduced from \$2.77 per \$100 to \$2.73 per \$100.

The maximum insurable earnings will remain at \$39,000 for 2005.

## **PROFESSIONAL CORPORATIONS**

The Canada Revenue Agency (CRA) has recently been posed the situation where a group medical practice decides to convert to a corporation owned by all of the former partners. The corporation would receive all of the income from the practice. It would contract with each of the professional corporations owned by each of the individual practitioners as independent contractors and the corporation will pay each of the professional corporations based on a per diem rate which may vary between contractors.

It appears from the Advance Tax Ruling provided that CRA will recognize this arrangement and further that the separate professional corporations will not be treated as "personal service businesses". This indicates a reasonable approach by CRA towards new arrangements being made available to health practitioners in Ontario as the result of the introduction of professional corporations.

Now if we could only get the professions' regulatory bodies to loosen-up the unreasonable restrictions when incorporating.

## **GST**

### **NEW DEFINITIONS OF "CARRYING ON BUSINESS IN CANADA"**

The CRA has once again decided to create law on their own. As we have stated previously, CRA is an enforcement agency. The Ministry of Finance has

responsibility for writing legislation. In the matter at hand, CRA has proposed to totally re-write the law as it stands now by invoking a policy that is contrary to the law.

The issue is related to the definition of carrying on business in Canada for GST purposes. Currently, the policy is based on the following three criteria, as it applies to non-residents doing business in Canada:

1. The place where the contract is made;
2. the place where the operations from which profits arise take place, and;
3. other factors.

Past court cases have placed the second criteria as more determinative than the first. The problem is with the new draft policy that may affect many more business operations and is contrary to both existing legislation and case law.

The CRA has proposed 12 criteria to replace the above three:

1. The place where agents or employees of the non-resident are located;
2. the place of delivery;
3. the place of payment;
4. the place where purchases are made or assets are acquired;
5. the place from which transactions are solicited;
6. the location of assets or an inventory of goods;
7. the place where the business contracts are made;
8. the location of a bank account;
9. the place where the non-resident's name and business are listed in a directory;
10. the location of a branch or office;
11. the place where the service is performed;
12. the place of manufacture or production.



The first factor significantly broadens the reach of GST because it is considered regardless of the powers of such agents or employees. This attempt by CRA is also at odds with the definitions used for income taxation of non-residents and also appears to reach beyond Canada's income tax treaties.

However, since GST is not an income tax, the treaties would not apply and so CRA is trying to create a totally new tax base outside of existing Canadian law. It is hoped that this draft will be withdrawn or substantially revised, otherwise many operations that believe they are operating appropriately will be held by CRA to a higher standard of compliance.

### **2005 AUTOMOBILE LIMITS**

The Minister of Finance has announced the automobile limits and benefit rates for 2005:

- The maximum allowable amount for claiming capital cost allowance remains at \$30,000.
- The deductible limit for leasing remains at \$800 per month (plus applicable federal and provincial taxes) for leases entered into in 2005.
- The maximum loan interest allowable on the purchase of a vehicle will remain at \$300.
- The limit on the deductible amount of tax-exempt allowances paid to employees has been increased to \$0.45 per kilometre for the first 5,000 kilometres and \$0.39 for each additional kilometre.
- The taxable benefit for personal use of operating expenses paid by employers will increase to \$0.20 per kilometre. For taxpayers employed in selling or leasing automobiles the rate increases to \$0.17 per kilometre.

