Behind the Counter

Corporate Tax Update for 2009

The small business federal tax rate for income that qualifies for the small business deduction is 11%. The general rate is 19% and the rate for investment companies is 34.7%. The small business deduction limit also increased from 400,000 to 500,000 effective January 1, 2009. This will be prorated depending on the fiscal year. Canadian controlled private corporations that have taxable income less than the small business limit can pay the balance owing of any corporate income tax at the end of the third month following their fiscal taxation year.

The Canada Revenue Agency (CRA) is trying to phase in the requirement for corporations to electronically file their tax returns and electronic filing will become mandatory for large corporations after the 2009 year with various penalties applying for non compliance.

The penalties for remitting source deductions late have also been changed from the 10% for a first office to a graduated system depending upon the number of days late. A point of caution if you are remitting the source deductions through your financial institution is that they may still be considered late if the bank takes a few days to process the transaction. If you make the remittances on-line through the CRA site, they will be considered to be on-time.

Again the issue of Director's liability is in the forefront of several court cases. Directors must ensure that they have enough liability coverage. The courts have decided that a director of a corporation must act in the best long term interests of the corporation, rather than focusing on short term profit. If the corporation files for bankruptcy any fees due to the CRA will have precedence over any other creditor.

The CRA's administrative policy indicates that remuneration will not be challenged on reasonableness if it is paid to an active shareholder or manager who is a resident of Canada by a Canadian controlled private corporation. The CRA does look for payments that may have been made to non-active shareholders, such as children and spouses and does review whether the remuneration is reasonable for the contribution made by the non active shareholder. Active shareholders can receive the non-active business income.

With the dropping corporate tax rates and the upcoming adjustment to the dividend tax credit for eligible dividends, tax planning for shareholder/managers will be challenging. The automobile allowances and expenses are the same as they were in 2008 and are expected to be carried over into 2010 without any changes. The CCA limit for the purchase of an automobile will be 30,000 plus taxes. The deductible leasing costs are $800 a month plus taxes and the deductible interest is $300 a month for vehicles acquired after 2005. The tax exempt mileage reimbursement allowances are $.52 for the first 5,000 km and $.46 thereafter. The rate for the taxable benefit of using a company owned vehicle is $.24 and $.21 if you are in the business of selling cars.

There were some slight changes to some of the Capital Cost Allowance classes and rates. The special 50% straight line Class 43 for machinery and equipment acquired after March 19, 2007 has been extended until the end of 2011. There is a temporary Class 52 for computer hardware and system software that was purchased after January 27, 2009 and before February 1, 2011. This class allows a 100% write off with no half year rule.

Management fees are still under the radar and several cases of these fees have not been allowed in the courts. The critical component is that a management service contract was in place between the parties describing the duties of the fees in broad enough terms so that if they should come under scrutiny, any duties performed would not be offside.

Scientific Research and Development claims must be made within 12 months of the corporation’s fiscal year end.

The dividend tax credit with respect to eligible dividends will be undergoing some changes starting in 2010 to bring the credit more in line with the reducing tax rates of the corporation.

If you are considering entering into a partnership make sure that you have a partnership agreement in writing between you that indicates the actions that must be taken to have a bona fide partnership. There is a particular case in the courts whereby a verbal promise was made between the partners, but one partner became frustrated by the amount of time it was taking to close a deal that he went and closed the deal on his own. The rest of the partners sued him for breach, but because there was nothing in writing about what would constitute a partnership between the parties, the courts decided that the partnership did not exist.

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