Legal & Policies Committee

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AMNESTY FOR VOLUNTARY DISCLOSURE

Revenue Canada has a voluntary disclosure policy to encourage individuals and corporations to correct past filing deficiencies. If a tax-payer voluntarily files a tax return or supplies missing information, only the outstanding tax and interest will have to be paid. No prosecution for gross negligence or willful evasion will be undertaken, nor will any civil penalties (including late filing penalties) be imposed on any amounts included in such voluntary disclosure. A disclosure is not considered to be voluntary if it arises after Revenue Canada has begun audit or enforcement action.

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REDUCING BRITISH COLUMBIA'S CAPITAL TAX

Some Planning Points

British Columbia Capital Tax applies to corporations with permanent establishments in BC at a rate of 0.3 per cent of taxable capital (different rates for financial institutions). Some corporations may already be paying the 0.2 per cent federal corporation capital tax on paid up capital in excess of C$10 million. For example, an investor with a C$50 million commercial building through a corporation (Canadian or non-Canadian) may be expected to pay combined capital taxes of approximately C$230,000 per year.

Review existing accounting policies

It may be possible to reduce the BC capital tax liability (in some cases federal capital tax also) by simply reviewing the accounting policies of the company to ensure that the presentation of the financial statements are optimized from a capital tax perspective. Some of the issues which a corporation might consider include legally netting intercompany balances, expensing costs rather than capitalizing, writing down of assets where appropriate (value of commercial properties in Vancouver has gone down substantially in the past few years) and reviewing the current depreciation rates. Since accounting principles are continually evolving, it is important to review the changes to ensure that any potential benefits can be capitalized.

Off-balance sheet transactions

To reduce taxable capital for BC capital tax purposes, the company may consider leasing machinery which would qualify as operation leases (instead of buying). If a major purchase is considered at the end of the year, it may be beneficial to delay the purchase until the beginning of the next fiscal year. Under certain circumstances, it may also be possible to arrange a sale and lease back of existing fixed assets to reduce the taxable capital of the company. Consideration may be given to setting up an Alberta subsidiary which would acquire movable assets and lease them back to the BC parent company. It is important to ensure that the subsidiary is not subject to BC capital tax from having a permanent establishment in BC.

Use of idle liquid assets

Another simple planning technique is to use idle cash to purchase assets eligible for investment allowance such as shares and bonds of other corporations (not including government bonds or debentures). Similarly, idle cash could be used to reduce liabilities: for example, declared dividends should be paid prior to the end of the taxation year.

Permanent establishment

If the company subject to BC capital tax is involved with activities in another province that does not levy provincial capital tax (such as Alberta), the company may consider either shifting the gross revenue and salary and wages allocation to that province or incorporating a separate entity in that province to conduct the business. If the company has significant sales in a non-taxing province without a permanent establishment, the company may consider purchasing land in the province or giving authority to an agent or employee to contract. This will create a permanent establishment in the non-taxing province and accordingly the taxable capital allocated to BC will be reduced.

Use of non-corporate entities

The use of non-corporate entities such as partnerships (general or limited), trusts or sole proprietorships to hold assets and liabilities is the most effective planning alternative. A common technique is to hold