Tax Tidbits – September 2014

Sales tax – Election for nil consideration

When entities transact with each other they are generally responsible for collecting and remitting the appropriate sales tax to the Canada Revenue Agency ("CRA"). Party A pays the goods and services tax ("GST") or harmonized sales tax ("HST") to Part B. While Party B remits the taxes to the CRA, Party A claims the taxes as Input Tax Credits ("ITCs") on the sales tax return and recovers the taxes paid as either a reduction of taxes to be remitted or as a refund.

Where parties are related, this can cause needless cash flow timing issues. Therefore, providing certain criteria are met, closely related corporations and partnerships can jointly elect to deem certain supplies made between them to have been made for $Nil consideration. This results in GST and HST not having to be collected and remitted on these supplies.

Up to this point, members making the election simply needed to retain a copy of the duly signed election form in their files in case the CRA requested to see it. The 2014 Federal Budget introduced changes to this election process.

Effective January 1, 2015, these election forms are now required to be filed with the CRA for all supplies made subsequent to 2014.

A copy of Form GST 25[1] must be completed by all members of a closely related group that wish to make the election, specifying the effective date of the election (likely January 1, 2015). The joint election form must be filed with CRA on the earliest GST/HST return filing deadline of the members to the election. Special attention must be made to the frequency of GST/HST filings between related groups to ensure that the election is filed on time.

Not filing the election will result in all supplies between closely related corporations or partnerships being taxable, and GST/HST will need to be collected and remitted accordingly.

Please contact **Tara Hauck** of the Manning Elliott Tax Team with any questions.

[1] GST25 *Closely Related Corporations and Canadian Partnerships - Election or Revocation of the Election to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration*
http://www.cra-arc.gc.ca/E/pbg/gf/gst25/README.html

You can't take it with you…

Following the lead of many high-profile millionaires (and billionaires) such as Warren Buffett, Gene Simmons, Bill Gates, and Sting, many wealthy Canadians are considering directing a portion of their estate to charities instead of their children.

While the objectives may include wanting to be philanthropic and wanting younger family members to make their own way in the world, properly-structured donations can have the added benefit of tax savings.

Currently, a "gift by will" can be claimed as a donation by the deceased individual in either the terminal income tax return or in the tax return for the prior year even though the transfer to the charity is made by the individual's estate. This can provide a very significant planning opportunity. A person is deemed to have disposed of their assets at the time of their death and, if the assets are not passed to a spouse, there may be large taxable capital gains in the year of death that can be offset with the planned gifts. Also, the general limitation on donations of 75% of the person's net income does not apply to the terminal return.

In order to qualify as a "gift by will", the CRA has stated that the amount that the charity is entitled to receive must be determinable by reference to the will at the time of death. If the will allows full discretion to the executors as to the amounts and recipients of the gifts, the donations will not qualify and will only be available for use within the estate. The risk of not qualifying as a "gift by will" is that there may be taxable income in the deceased individual's return which cannot benefit from the donations while the estate has no taxable income and no use for the donation credit.

The 2014 federal Budget included measures to increase the executors' flexibility in use of gifts by will. For deaths after 2015, instead of the gifts being automatically deemed to have been made before death, the executors will now be able to allocate the credit to the taxation year in which the gift is made, any previous taxation year of the estate, or either of the last two taxation years of the deceased individual.

Although death and taxes may not be pleasant to think about, proper planning and documentation of your charitable wishes can benefit your chosen charities as well as reduce your tax bill from the CRA.

Please contact **Jody Hatto** of the Manning Elliott Tax Team with any questions.

And More…

- **Filing a tax return for a deceased person? The CRA has some tips to help expedite processing**

  One would expect that it would be sufficient to send one copy of the deceased's will to the CRA. Based on phone discussions with several CRA agents, it turns out this is not the case. The agents recommend sending a copy of the probate documents, will, and death certificate with each of the following filings:

  - T1 Final Individual Return
  - Form T1013 Authorizing a Representative for the deceased's social insurance accounts
  - T3 Application for Trust Account Number or T3 Estate Return
  - Form T1013 Authorizing a Representative for the deceased's estate accounts
  - Form TX19 Asking for a Clearance Certificate

  For further assistance with filing income tax returns for deceased persons, please contact **Dagmar Zanic** of the Vancouver Manning Elliott Tax Team.

- **BC Tax Conference**

  The Canadian Tax Foundation hosted its annual conference on September 29th and 30th at the Vancouver Convention Centre. Topics included:

  - Issues arising in the sale of a business
  - An update on the new BC PST legislation
  - Penalties and reassessments beyond the statutory limits
  - Owner-manager remuneration

  Six members of the Manning Elliott Tax Team attended this informative conference – stay tuned for upcoming updates on what they learned…