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This Month:

- Canada Revenue Agency’s Audit Powers
- Owner-Managed Business-Creditor Proofing

Canada Revenue Agency’s Audit Powers

The CRA has recently issued a statement that it will not appeal a recent Federal Court of Appeal (“FCA”) tax case, Canada vs. Cameco Corporation. At issue in the Cameco case was whether the CRA could require an employee to be interviewed under a general audit and inspection under the Income Tax Act. The CRA had requested to interview 25 employees and Cameco refused, instead offering to answer in writing. The FCA concluded that the CRA does not have that power, however, it also mentioned that all taxpayers should fully cooperate with reasonable requests arising in the course of an audit. If a taxpayer refuses to be interviewed, the FCA stated that the CRA is free to make inferences and assumptions and to assess on that basis. In its statement published May 31, 2019, the CRA states the following:

“Refusal to participate in oral interviews, and to provide the assistance required during the course of an audit indicates a lack of openness and transparency, and potentially a higher risk of non-compliance. Taxpayers and the CRA have a shared interest in conducting and participating in oral interviews. The information gained in these conversations helps enhance the transparency and accuracy of CRA audits and can lead to earlier tax certainty. This shared interest in early tax certainty is not impacted by the FCA decision. The CRA will continue to seek interviews where necessary and expects that the vast majority of taxpayers will continue to comply. Where taxpayers decline interviews in circumstances similar to the Cameco case, the CRA will use alternative means to carry out its obligations in verifying a taxpayer's level of compliance, which may increase tax uncertainty and compliance burden for the taxpayer. This may include the use of assumptions about the nature of a taxpayer's business activities and tax planning to form the basis of an assessment of taxes owing.”

It should be mentioned that Cameco had an excellent compliance history, and this had an impact on the judgement. It is still reasonable for taxpayers to request a list of questions from the auditor, to limit interruptions as much as possible and to have on record what was requested and supplied. The CRA is still permitted to ask reasonable questions to the employees that are relevant to the scope of the audit and more specifically in relation to its task of auditing inventory, documents and records of the business. However, if the CRA is merely interviewing employees as “fishing” expedition, the taxpayer should consider its options in light of the Cameco decision and possible repercussions from the CRA.

YOUR FIRM NAME
Address
Telephone #s
Email
Web Site

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Owner-Managed Business-Creditor Proofing

Every business owner should be concerned about creditor proofing his assets. Consider these suggestions:

Transfer assets out of the company

- Place capital assets in a separate holding corporation so that subsequent legal claims that arise in the operating company do not affect these assets.
- Lease the assets in the holding corporation back to the operating company. It may be easier to sell the operating company in the future.
- Protect cash assets from potential claims. Pay tax-free dividends from the operating company to the holding company regularly.
- Establish a retirement compensation arrangement (RCA). This removes funds from the corporation as a tax-deductible expense and places the cash into a creditor-protected Trust.

Secure the business owner's assets

- Secure the shareholder loans by establishing a general security arrangement to provide the shareholder priority over all unsecured creditors.
- Transfer assets to the lower risk spouse on a roll-over basis for tax purposes. If there were a future marriage breakup, this type of property would usually be equally divided between the spouses under the provincial family legislation, regardless of who owns title.
- An estate freeze would transfer the future growth of the assets to other family members.
- Transfer the assets into a Discretionary Family Trust to protect them from creditors. A Discretionary Family Trust permits the transferor to retain control over the assets. This would produce a taxable disposition unless the transfer is to a qualifying Spousal Trust or a Joint Partner Trust or an Alter ego trust.

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