The Quarterly

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U.S. Tax Filing and Disclosure Issues for Canadian Snowbirds

Many Canadians seek refuge from harsh Canadian winters and head to the southern U.S. during the months of January to April. Spending many months in the U.S. each year has certain U.S. income tax implications that Canadian snowbirds should be aware of. Canadians who spend a substantial amount of days every year residing in the U.S. may be deemed to be a U.S. resident for certain U.S. tax purposes. If a Canadian snowbird is found to be a tax resident of the U.S., he or she would be liable for U.S. income tax on worldwide income every year, as well as U.S. Estate and Gift taxes. Fortunately, a closer connection exception, as well as provisions in the Canada – U.S. Income Tax Treaty, contain rules that exempt the Canadian snowbird from being a tax resident of the U.S. Therefore, as a continuing resident of Canada, he or she would only be liable for Canadian income tax on worldwide income and not subjected to U.S. income or gift taxes. However, the Canadian snowbird, who is not domiciled in the U.S., may still be liable for U.S. estate tax if he or she owns U.S. situs property, the most common type of which is U.S. real property.

Winter 2013

The U.S. Substantial Presence Test

The "Substantial Presence Test" applies to snowbirds who spend a substantial amount of time in the U.S. each year. According to this test, if the snowbird spends a calculated amount of at least 183 days in the U.S. during a 3 calendar year period, being the two prior years plus the current year and is present in the U.S. for at least 31 days in the current calendar year, that individual would be deemed to be a resident of the U.S. for tax purposes on the first day the test is met. The 183 days contained in this test is calculated using the following formula:

Number of days present in the U.S. in the second prior year x 1/6, +
Number of days present in the U.S. in the prior year x 1/3, +
Number of days present in the U.S. in the current year, (min. 31 days) = at least 183

Therefore, for example, if a Canadian snowbird is present in the U.S. for say 122 days (being a little over 4 months each winter), during each of the years 2010, 2011 & 2012, he or she would meet the Substantial Presence Test. The calculation would be as follows:

Days present in the U.S. each year	Calculated number of days
In 2010 – 122 days x 1/6 =	20.33
In 2011 – 122 days x 1/3 =	40.67
In 2012 – 122 days x 1 =	122.00
Total	183.00

As can be seen, the "183 days" requirement under the Substantial Presence Test can be satisfied if the Canadian snowbird spends as little as 122 days in the U.S. in each of the 3 calendar year period or some combination of days each year, which when calculated using the above formula equals at least 183 days.

The Closer Connection Exception

As noted above, there is an exception to the Substantial Presence Test, referred to as the "Closer Connection Exception". The Closer Connection Exception applies if the individual is present in the U.S. in the current year for less than 183 days and is a resident of another country (i.e. has a tax home in another country – such as Canada) with which he or she has a closer connection than to the U.S. If the closer Connection Exception Applies, the individual would not be deemed to be a tax resident of the U.S. The Closer Connection Exception is claimed by filing Form 8840 ("Closer Connection Exemption Statement") with the U.S. Internal Revenue Service no later than June 15 of the subsequent year.

For those Canadian snowbirds that are present in the U.S. for 183 days or more in the current year, they would not be eligible to file a Closer Connection Exception by filing Form 8840. For these Canadians, they would have to rely on the Canada – U.S. Income Tax Treaty to ensure that they are not deemed to be a tax resident of the U.S. In order to claim this treaty based position, the Canadian snowbird should file a U.S. income tax return Form 1040NR "U.S. Non-Resident Alien Income Tax Return" and attach Form 8833 "Treaty-Based Return Position Disclosure" to this return no later than June 15. Form 8833 is used to disclose the treaty based position that the Canadian snowbird is a resident of Canada for income tax purposes pursuant to the Canada – U.S. Income Tax Treaty. Article IV of the Canada – U.S. Income Tax Treaty deals with the residency for tax purposes of an individual who may be a resident or a deemed resident of both Canada and the U.S. Generally, a resident of Canada (for tax purposes) will remain a Canadian resident unless he or she has become a non-resident of Canada by emigrating from Canada and establishes residency in the U.S.

Revisiting the Need for Forecasting and Performance Measurement in a Fast-Paced Economy

With the onerous daily operational demands put on owner-managers, it is easy for an owner-manager to lose sight of big picture planning that is essential for the long term viability of their company. An owner-manager must ensure they are guiding their business in the right direction using long-term, proactive planning as opposed to short-term day to day reactive business decisions. This long-term, proactive leadership is best achieved through effective forecasting and performance management.

Forecasts and Projections

Small business success is largely achieved through the maintenance of a well tuned organizational structure, key measurement systems to evaluate performance, prudent cash flow management practices and the effective use of forecasts.

For those who are not familiar with the differences between forecasts and projections, forecasts are future oriented financial information prepared using assumptions, all of which reflect the entity's planned courses of action, given management's judgement of the most probable set of economic conditions. Projections are similar to forecasts, with the exception that they include one or more hypotheses that are assumptions consistent with the purpose of the information but are not necessarily the most probable in management's judgement. When preparing forecasts and projections, the owner-manager must also consider entity-specific, industry, market and economic factors.

There are several benefits associated with preparing forecasts and projections. First, they assist the owner-manager in understanding how their business will perform financially if certain strategies are carried out. Secondly, they provide an estimate of future financing needs allowing the owner-manager time to secure additional financing on a proactive basis, rather than a reactive basis, which would otherwise be too late. Thirdly, they are a great tool for communicating to bankers or investors as to why the business needs additional financing, as well as demonstrating the company's ability to repay newly secured loans. Lastly, they provide the owner-manager with a benchmark against which future performance can be measured.

Key Performance Indicators

After creating forecasts and projections, the owner-manager needs to establish a means of tracking the company's performance. This is done through measuring and monitoring key performance indicators.

Key performance indicators are quantifiable measurements that monitor the critical success factors of a company and may differ from company to company. They can be both financial and non-financial so long as they are measurable. The challenge for the owner-manager is to determine which key performance indicators are truly critical to the long-term success of their particular business.

Once we have determined which key performance indicators to track, they can be used for learning and performance improvement. Key performance indicators can also be used to guide employee actions to ensure they are consistent with overall objectives and monitor employee performance. For example, if one of the key success factors of a business is client retention, one key performance indicator would monitor sales to repeat customers per sales staff.

Think of key performance indicators as the dashboard of a business. The dashboard shows the owner-manager what they need to know to be in control. It will identify drivers that affect the business, keeps track of those drivers, compares performance against projections, and allows the owner-manager to take appropriate action to meet those projections. Remember that similar to the dashboard in a car, only a few critical key performance indicators need to be tracked. The dashboard will not encompass all of the company's performance indicators but should rather focus on the most important drivers for the success of the company.

Key performance indicators often include financial ratios which fall into 3 main categories; liquidity, solvency and profit margin ratios. Common liquidity ratios quantify the aging of accounts receivables and payables along with the number of days inventory is on hand. Comparing total current assets to total current liabilities is also a good measure of a company's ability to meet short-term obligations. Solvency ratios would include interest coverage and debt to equity ratios that measure an entity's ability to service debt obligations. Lastly, profitability ratios would measure profit margins, return on equity and return on assets to ensure the long term profitability and viability of the company.

Understanding the Responsibilities and Risk of Being a Director

Know What You're Getting Into

Incorporation of an owner-managed business requires shareholders to elect a board of directors to assist in managing the affairs of the company. The owner-manager will almost certainly be elected, as well as a member of their family. In many instances family members allow themselves to be elected director simply because they want to help keep family control of the business. Unfortunately, all too often these family members have little business experience and only a minimal understanding of the onerous responsibility and contingent risk that the position of director carries with it.

The Canada Business Corporations Act and the provincial Corporations Acts outline the responsibilities of a director. Subject to any unanimous shareholders agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation. Every director and officer of a corporation, in exercising their powers and discharging their duties, shall act honestly and in good faith with a view to the best interests of the corporation; and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Be Aware of Personal Liability

Directors may be held accountable and personally liable if they fail to ensure that a corporation maintains proper books and records or fails to file required forms or make payments to regulatory authorities for payroll remittances, sales and excise taxes.

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It may come as a surprise to many that directors can be held personally liable for breaches of duty in such areas as mismanagement of corporate assets, financial losses, wrongful dismissal, employee discrimination or failure to address environmental issues for which the company could reasonably be held responsible.

The legal cost of a director's defense when named in a statement of claim against the company may be advanced or reimbursed by the corporation, as long as it is determined that the director acted honestly and in good faith with a view to the best interests of the corporation. In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual would have had to have reasonable grounds for believing that the individual's conduct was lawful.

Insurance

A corporation should carry insurance to protect the director against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation.

Director Responsibilities

The role of director in a company, regardless of its size or province of incorporation, places a burden of responsibility that many owner-managers are not aware of. It is incumbent upon directors to be aware of:

- the risk of negligence and the potential liability of all directors or other officers of the corporation;
- the need to insist that they are provided with all pertinent information they require to oversee the operations of the corporation;
- the statutes and regulations that the company is obligated to follow;
- the financial condition of the corporation at all times;
- the need to avoid any conflict of interest. A director should have no task outside their responsibility as director that could interfere with their responsibility to the company;
- the need for rules and guidelines within the corporation to ensure confidentiality of not only all corporate documentation but all information concerning employees;
- the need to document the information used and the process of how major decisions were arrived at;
- the need to use corporate legal counsel in contentious situations to demonstrate that due care and diligence were exercised before the decision was made; and
- their obligation to understand the operations of the corporation and to participate and communicate with management on all matters of corporate significance regardless of whether a director agrees or disagrees with the activities of management.

The ownership and the directors and officers of family-owned businesses are usually one and the same. As such there is minimal risk of disgruntled shareholders taking the directors to task. However, outside entities, whether regulatory bodies or third parties, may not be so obliging. When family members are directors, the corporation may have trouble convincing authorities that objectivity, confidentiality and corporate governance are not tainted by non-arm's length relationships among family members. Carrying out director duties, as a reasonable and prudent individual would carry out, will mitigate these risks.

Tax Tip: "Accidental Death and Dismemberment Insurance and Critical Illness Premiums"

Prior to 2013, premiums paid by employers for Accidental Death and Dismemberment (AD&D) insurance as well as Critical Illness (CI) Insurance were non-taxable benefits to the employee.

However, effective January 1, 2013, employer paid premiums for AD&D and CI insurance are a taxable benefit and are to be included in the employee's income for the year in which the premiums are paid.

The changes apply to all contributions made by the employer, starting in 2013. In addition, if contributions are made by the employer after March 28, 2012 and before 2013 but relate to coverage after 2012, the contributions are to be included as a taxable benefit in 2013.

This change will not impact the tax treatment of private health service plans such as medical, dental and prescription drugs, which will remain non-taxable benefits. In addition, an employer contribution relating to a wage-loss replacement benefit payable on a periodic basis will continue to be non-taxable.

TAX TIP deals with a wide variety of issues and the information is general in nature. As each person's circumstances are unique, readers are urged to consult W&P prior to acting on the basis of material in this Tax Tip. If you have any questions regarding the content of this or any other Tax Tips, please contact the W&P Tax Group.

Human Resources Services from Williams & Partners

Williams & Partners Chartered Accountants LLP has added a Manager of Human Resources ("HR") to their team. Luisa De Jesus joined the firm to provide HR strategic direction and implement HR Best Practices in the firm. Williams & Partners is a growing firm with dedicated professionals and wanted to ensure they remain an employer of choice.

In addition to supporting the firm internally, Luisa also provides HR Consulting services to clients in supporting their HR objectives. She has expertise in a broad range of HR matters, including but not limited to: recruitment and onboarding, employee relations, performance management, training and development, succession planning, compensation, terminations, and policy development.

Luisa is a Certified Human Resources Professional with over 12 years experience and holds a Bachelor of Arts degree from the University of Toronto. She also recently graduated with honours, obtaining her Human Resources Management certificate in 2010.

Luisa is available to partner with you for any human resource needs you may have. We welcome you to let us know how she can help you with value-added solutions to enhance your company's effectiveness, address any people-related issues found in today's workplace, and provide your leaders with the necessary tools.

Client Corner - Focus Print Production

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As a print management company with over 15 years in the business, the Focus Print Production team of project management experts has the experience and knowledge necessary to expertly source exactly the right printer and production processes and then manage the entire project from start through to final delivery.

With Focus Print Production's Print Audit, companies have identified and benefited from reductions in their printing costs by as much as 40% and are able to reinvest these dollars back into their business.

As printers, paper, ink and bindings are not all the same, the Focus Print Production team will work with your company to maximize on quality and minimize on the cost of printed materials. Focus Print Production will use its proven techniques to manage your company's print workflow from creation to delivery more efficiently and cost effectively to increase profitability and improve brand/corporate image.

News Bits

New team members

We are proud to announce the following new additions to our team:

Charles Keem

Charles Keem has joined the firm's accounting group as a Staff Accountant. He has over three years of experience working in medium-sized public accounting firms. Charles graduated with his Honours Bachelor of Business Administration from Wilfrid Laurier University. Charles has successfully completed the UFE examination.

Carrie Lau

Carrie Lau returned to the firm's accounting group as a full time Staff Accountant. She previously worked with Williams & Partners as a co-op student during her university studies. Carrie graduated from the University of Waterloo with her Bachelor of Accounting and Financial Management and Masters of Accounting. She also recently successfully completed the UFE examination.

Christopher LaRose-Myers

Christopher LaRose-Myers has joined the firm's accounting group as a Senior Accountant. Christopher has over four years of experience working with a small accounting firm supporting owner-managed clients. He graduated from the University of Guelph with a Bachelor of Arts, specializing in accounting and economics and also attended York University to take additional accounting courses required for his CA designation.

Winter 2013 Planner	February 28th	Deadline for filing T4's and T5's for 2012
	March 1st	2012 RRSP contribution deadline
	April 1st	Deadline for filing T3 – Trust Returns; NR4 Returns
	April 1st	Deadline for filing WSIB Returns
	April 5th	Deadline to qualify for personal tax return "Early Bird Draw"

CONTACT US

You can reach us by phone at **416.969.8166** or on-line at **www.williamsandpartners.com.**

NOTICE

Williams & Partners distributes tax tips on a regular basis via email to our clients. If you wish to be on our email distribution list for tax tips, please contact Jackie Pincente at 416.969.8166 ext. 235, or by email to jackie.pincente@williamsandpartners.com.