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## MAXIMIZE THE AFTER TAX VALUE OF YOUR BUSINESS

For the majority of owner managers, their business is their largest asset. In most cases their retirement depends on the amount they receive when they sell. If you're determining the value of your business as part of your retirement planning, consider the amount you'll receive after paying income tax on the sale proceeds. That's the amount that will fund your retirement. The key to maximizing it is to reduce the tax payable. In most cases, the earlier you implement these tax-saving strategies, the more you'll save.

### 1. Incorporate your business

One of the biggest tax advantages in the Income Tax Act is the capital gains exemption. It allows an owner to shelter up to \$750,000 on the sale of qualifying shares of a private company. To take advantage of this exemption, shares of the company need to be sold. If you operate as a sole proprietor or a partnership, the sale of your business won't be eligible for the exemption. If you're planning to sell, you should convert your business to a corporation.

### 2. Share the wealth with multiple capital gains exemptions

The capital gains exemption is available to all individuals. Why not have your spouse and immediate family members as shareholders? Should the shares of the business be sold, each shareholder can use their capital gains exemption to shelter the gain on the shares that they owned. (The specific share ownership depends on the particular circumstances of each family – talk to us to see if this situation could apply to you.)

### 3. Remove non-business assets

Over the life of a business, your company may acquire assets that are not required to operate the business. A potential purchaser may not want these assets. In many cases, a company can transfer them to another related company on a tax-deferred basis, as long as it is not part of a sale process to a third party. Once the company has started the sales process, or has received an unsolicited offer, it is restricted from removing assets on a tax-deferred basis. By reviewing the corporate balance sheet, and removing non-business assets regularly, you can avoid unnecessary taxes when you sell the business.

### 4. Divide businesses into separate companies

In a case where two distinct businesses are owned by the same company, and it is likely each business might interest a separate buyer, selling one business without selling the other may pose challenges. Unnecessary taxes (and, potentially, a frustrated buyer) will likely result if one business is removed from a corporation prior to selling the other business. To avoid facing issues and paying unnecessary taxes, the separate business can be moved to a related company, on a tax-deferred basis, as long as it is not part of the sale to a third party. By separating the businesses into different companies, you get the flexibility, at a future date, to sell one business independent of the other.

Would you like to know more? We are happy to help you maximize the after-tax sale proceeds from your business. Contact your Hilborn Ellis Grant advisor with your questions.



## CPP'S NEW RULES FOR 2012

This year, the Canada Pension Plan (CPP) has undergone a few changes that may impact employers and individuals aged 60 to 70.

### Employers

Historically, once an employee starts receiving CPP benefits, they are no longer required to make CPP contributions. However, starting in 2012, if you have an employee who is receiving CPP benefits, you may need to withhold and remit CPP from their current earnings.

*If your employees are under 65*, CPP contributions are required. You must collect and remit CPP whether or not they are already receiving CPP benefits.

*If your employees are aged 65 to 70*, CPP contributions are required unless the employee specifically elects not to participate. They must fill out form CPT30 and give it to you.

Failure to withhold and remit CPP is the employer's responsibility. If you haven't withheld it, the CRA will collect the unremitted portion from you, which could end up costing you up to \$4,613.40 (\$2,306.70 x 2) for each employee affected. We recommend that you review any employees not having CPP contributions taken from their salary, and make sure the new rules haven't affected that person's status.

### Individuals 60 to 70 Years of Age

Starting in 2012, individuals wishing to claim CPP benefits will not have to stop working before applying for early CPP. However, with the new rules, when they do apply for early pension benefits, the discount applied to those benefits will increase. In 2011, the discount was 0.5% for each month early that the pension benefit was claimed. This will increase annually until 2016, when the discount will top out at 0.6% per month.

A second change is to the late application premium. In 2011 the premium was 0.05% per month. This year, if you delay collecting CPP pension benefits after age 65 (up to age 70), that premium will increase to be 0.7% by 2013.

If you are considering receiving your CPP Pension benefits early or are considering delaying receiving your CPP pension benefits, it's a good idea to review how the changes may impact your plans.

If you have any questions about your withholding obligations, please do not hesitate to contact your Hilborn Ellis Grant LLP advisor.

## DIRECTOR LIABILITY: A RECENT COURT DECISION RESULTS IN MORE EXPOSURE FOR DIRECTORS

Many corporate directors are surprised to find that they could be personally liable for GST/HST, source deductions and the employer portions of CPP and EI for their corporation. If a corporation fails to remit these amounts, and CRA is unable to collect the amounts, an individual who has been a director in the prior two years can end up being personally liable.

The "due diligence defence" can protect the director if he or she has exercised care, diligence and skill to prevent the failure that a prudent person would have exercised in similar circumstances. In cases where a company has failed to remit GST/HST or employee source deductions, and has subsequently become insolvent, the due diligence defence has been used successfully to protect directors.

Although courts have historically allowed a very broad interpretation of this exemption, a recent Federal Court of Appeal case has significantly restricted its use. In the case at hand, the company had used funds from GST/HST and source deductions to keep their organization afloat. Although the directors intended for the company to repay these liabilities, they were not able to obtain adequate external financing to rectify these failures.

The results of this case are significant. It's likely that CRA will use the broader scope provided by the courts to attempt collection from directors in the future. Now, more than ever, directors should be aware of their company's compliance with tax filings and remittances. To protect themselves, they should:

- See that strong corporate internal controls are in place to ensure statutory obligations under the Income Tax Act and Excise Tax Act are met.
- Avoid appointing inactive directors who will not be able to carry out the duties of the function on an active basis, and may not be able to exercise due diligence.
- Avoid appointing directors who do not have adequate training or understanding of the compliance obligations of a corporation.
- Avoid using unremitted tax money to finance ongoing operations of a company.



# Facts & Tax

Our professional staff would be happy to discuss the statutory obligations that a company must meet. If you have any questions, please feel free to contact your Hilborn Ellis Grant advisor.

## IT'S A LEAP YEAR! CHECK YOUR DEADLINES.

Every four years, we get an extra 24 hours in February. While that's great news for the time pressed, it's a variation that can be confusing when it comes to taxes, since a few deadlines are based on the number of days instead of month end. This year, here's how the extra day may affect you:

- RRSP contribution deadline. For a contribution to be deductible in 2011 it must be made within 60 days of the year end. The deadline for your **RRSP contribution is February 29, 2012.**
- Trust deadlines. A trust tax return must be filed within 90 days of its year end. Most trusts have a December 31st year end, so the deadline for filing your 2011 Trust returns and **T3 slips is March 30th, 2012.**

## HILBORN ELLIS GRANT TAKES A DAY TO HELP HOMELESS YOUTH

On November 22, we shut the office doors for the day and trooped over to Eva's Phoenix, a charity that works with homeless and at-risk youth by providing safe shelter and a range of services to help them lead productive, self-sufficient, healthy lives.

The entire firm spent the day painting the youth houses and installing new light fixtures. We had a great time helping and getting to know some of the youth who live at the facility. Working directly with the youth at the shelter was a wonderful way to learn more about the important and necessary work they do at Eva's. Thanks to everyone at Phoenix for allowing us to help with your success!

## STAFF ACCOMPLISHMENTS

### Congrats to Charles Keem and Peter Pang, our newest CAs!

Each September, the rigorous three-day final exam for the Chartered Accountant designation is written, with results released in early December. We'd like to congratulate CAs Charles Keem and Peter Pang, both of whom successfully completed their Uniform Final Examinations this year!

### Jasmine Gard and Andrea Heerdegen take their first steps toward CA certification

The Core Knowledge Exam or CKE is the first step to achieving a Chartered Accountant designation. We are pleased to announce that Jasmine Gard and Andrea Heerdegen successfully wrote the exam and are on their way to becoming CAs!

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