



TAX TIPS & TRAPS

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CRA REVIEWS & AUDITS – COMMON AREAS

Vehicle Purchases – Additions to Class 10 – Asked for invoices, personal vs. business use, ITC claimed

Vehicle Expenses – GIFL Code 9281 – detailed ledger of transactions, business vs. personal use

Business Income & SBD – Companies that may be or suspected to be involved with rental income – generating income from property vs. business

Third Party Requests – PayPal ,E-Bay, Square, Rona Real Estate – Developers for Assignment Sales



PROFESSIONAL FEES – **LOW HANGING FRUIT?**

... Or could it be more?

Why spend so much time reviewing Professional Fees?



Easy to Catch – Legal fees of a personal nature, not incurred to earn income (i.e. deductible vs. ACB)

Section 15 assessments? - haven't seen any

My Experience – Two files where there were lawyer fees for family's personal will – NO reassessment

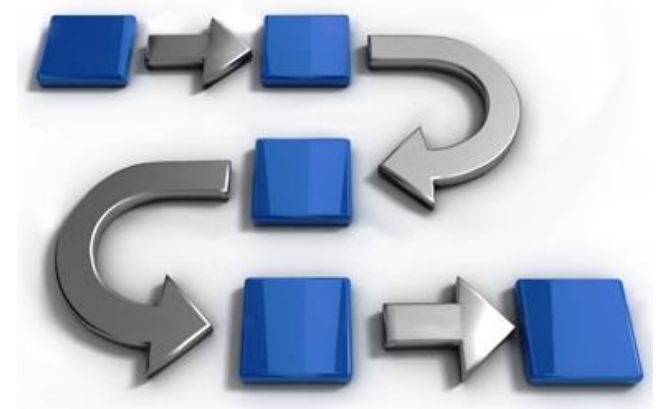
More than Likely Looking for More – Lawyer and accountant invoices can give them a roadmap to more technical transactions or areas to audit

SECTION 160 OF ITA – WHAT IT DOES

Clients owing taxes – Be careful with transactions where money is gifted, transferred, bills paid etc.

Section 160 – gives the CRA broad powers to collect tax where an individual who otherwise owes money to the tax department transfers property either directly or indirectly to a spouse, common law partner or a person to whom he or she is not dealing at arm's length.

Where a person receives assets from someone who owes taxes, the recipient becomes **jointly & severally liable** for the transferor's tax debts



Accountants & Lawyers
Uninformed professionals can easily get caught on the wrong side of advice

SECTION 160 OF ITA – **WAYS YOU CAN BE CAUGHT**

“Classic” Transaction – One spouse transfers matrimonial home (or other property) to spouse for no consideration

Dividends – Corporation pays dividends to related individual when there is a tax debt

Gifts to Kids – Dad pays for his daughter’s wedding and 5 years later she gets a Notice of Assessment in the mail saying SHE owes

Timing – Critical date is not when the legal process is finalized, rather the date the taxes became due

POSSIBLE DEFENSE

Fair Market Value – the individual/spouse actually paid for the assets

Not Owed – the taxes were not actually owed (or not as much)

SECTION 160 OF ITA – NEED TO BE AWARE OF

No Statute Barred Time Limit – Cases where CRA has assessed for transactions 10 years ago

Tax Liability – CRA will only go after the full amount of tax owing, not more

Issue Assessments Quickly – CRA won't wait to see if corporation pays it or is appealing assessment

Jekyll & Hyde – Collectors can issue assessments with limited knowledge of law – but some of the smartest people at CRA handle these cases

PLANNING TIP

Paying Dividends

Large tax liabilities may result in automatic S.160 letter

Late Filed T2 Returns

Liability generated plus possible transactions already transpired

SECTION 160 OF ITA - COURT CASE

How much was actually paid for home? – Two transactions involving business but court finds in favour of the taxpayer

Home Value	\$ 409,000
50% portion to Ms. Ashworth	\$ 204,500
Assumed mortgage	\$ 93,865
Payment of line of credit	\$ 103,904
Amount open for assessment	\$ 6,730



MARILYN ANN ASHWORTH vs. HER MAJESTY THE QUEEN

SECTION 160 – PRO CORP SERVICES

Aitchison Professional Corporation



Daughters



No tax since 1992

Owes \$2.1 million

“Right to invoice for legal services”

Can it be considered **property**
under Section 160?

COURT - CRA is trying to “fit a
square peg into a round hole”

AITCHISON PROFESSIONAL CORPORATION vs. THE QUEEN

SECTION 325(2) CASE – TIME FRAME & LOAN

Time frame of the actual tax liability

Transfer took place on August 18, 2008

Tax assessment went through the process and finalized September 9, 2016

Legislation clearly states that director is liable when the tax became due, not when the legal process was finalized – before August 2008



SHECK vs. THE QUEEN

CRA COLLECTION – SUPER PRIORITY



Trust Funds – Amounts collected for GST/HST and payroll do not belong to business

GST/HST – Collected for the Government
ETD – Collected for employees & Government

Taxpayer sold principal residence and paid back the mortgage – **CRA went after bank & won**

Bank **should have paid** the GST/HST assessment first - **always first in line** in terms of priority regardless of security

REAL ESTATE – OVERVIEW OF INITIATIVES



Property Flipping – Business income as opposed to capital gains and Principal Residence Exemption

Contracts to Purchase – fully taxed as income and not capital gains

Unnamed Persons Requirement – CRA has issued 48 UPR's 2015-2017

Unreported Income – Source of funds for down payment – lifestyle, evasion, illegal activity



REAL ESTATE – CRA AUDIT

... OK great but can you at least be reasonable and apply **common sense**?



Daniel sells his condo



Condo – Principal Residence



Daniel meets Dianna at the Condo Project's Sales Event

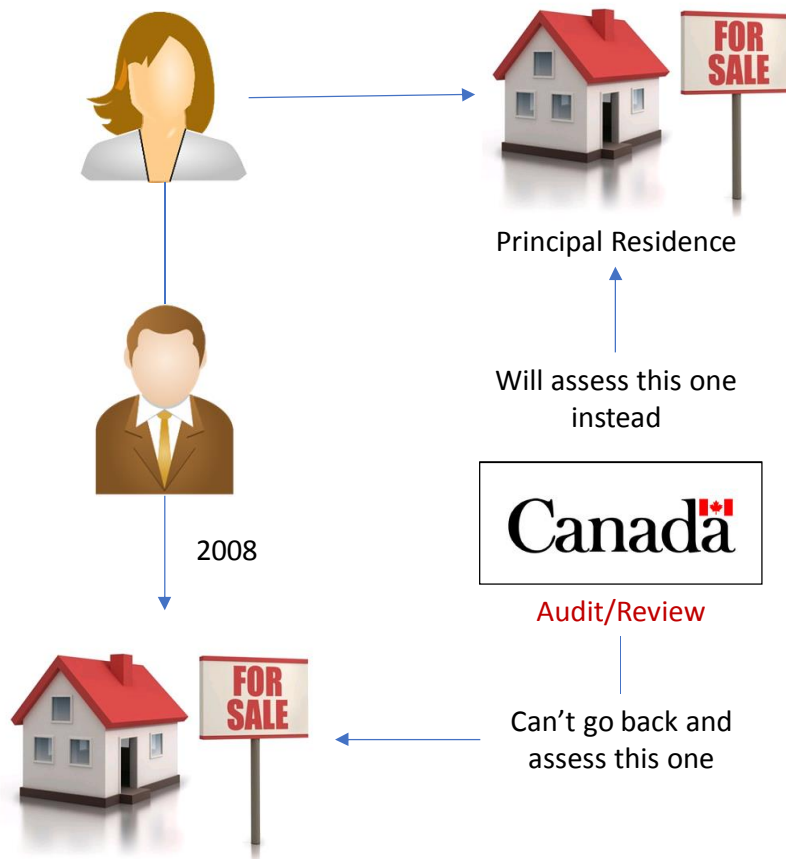


Move in together & sell Dan's condo

Auditor Remarks – Dan's intention was to sell the condo because he owned it for a short period (MBA Queens) – Scheme to sell the condo and not pay tax on the profit

Appeals Officer – Had they met at a condo board meeting I would see your point and agree with you (i.e. if they met after they bought their respective condos) - ??

REAL ESTATE – BUSINESS INCOME RISK



GST/HST Department – saying it's a commercial transaction subject to GST/HST

Tear Down, Build & Resell – Did live in for a period of time – may have been ok, but ...

2008 Transaction – Established a pattern and now Mary's sale is a business transaction with business income and GST/HST assessed



Brian was **21 years old** at the time

Parents were really the ones behind the transaction

CRA supervisor said would probably just settle for **regular capital gains** treatment, but pattern exists

UNREASONABLE BUSINESS EXPENSES - CASE

CRA one broad stroke – disallows everything

Poor business judgement – Not for CRA to decide

Fact that expenses exceed revenues = not relevant

Good case – Question of Reasonability

CORRECT TEST TO APPLY

No reasonable businessperson in the taxpayer's circumstances would pay such an expense

SHAREHOLDER HOME OFFICE – CRA ROUNDTABLE

VARIATIONS

1. A **monthly payment** based on estimated costs as a reimbursement
2. A **reimbursement of actual costs** – receipted expenses based on square footage of space used
3. A **monthly rental payment** – reported on the shareholder's T776 with the related expenses
4. Does the shareholder have to **register for GST/HST** given that the corporation is associated?

SHAREHOLDER HOME OFFICE – CRA ROUNDTABLE

CRA RESPONSE

“In each of the examples, a **monthly payment** based on estimated or actual costs related to a work space in home could be deducted by the corporation, if **reasonable** in the circumstances.”

“Generally, we would **evaluate reasonableness in relation to the actual costs incurred by the shareholder**. We would also expect, at a minimum, that the space is needed to file records, book appointments, take business phone calls and perform other administrative functions, as the case may be ...”

“If the amount **exceeds a reasonable amount**, the excess should be reported by the shareholder as a benefit under subsection 15(1)”

“ ... the shareholder would be considered a **small supplier** and would **not be required** to register and account for GST/HST.”

USE OF HOME OFFICE – CRA ROUNDTABLE

CRA - CAUTION

“... and that there is **no other space** available to the corporation”

“The comments in paragraphs 2 - 8 **in archived IT-352R2**, which deals with Employee’s Expenses, should be referred to. Even though the bulletin refers to employee expenses, the **same principles** apply would apply in an employee/shareholder situation. Therefore, **no mortgage interest or capital cost allowance (CCA) should be claimed.**”

“Also, where there is a **personal use element** to the home office, a further adjustment may be required to determine applicable business use”