

# TAX TARGET<sup>TM</sup>

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## WHAT'S NEW IN THE TAX SECTOR

### WILLS, ESTATES AND TRUSTS

In the recent Federal Budget (with Quebec announcing its intention to harmonize), there were substantial changes to the tax treatment of estates and trusts. The proposed rules are set to apply for 2016 and later taxation years. In particular, an estate will only have access to the graduated rates of tax for up to three years. Thereafter, the highest marginal rate will apply. Trusts created under a will (testamentary trusts) shall not have access to the graduated rates at all once operational.

There are additional measures which will affect the transfer of Canadian real estate or shares with substantial Canadian real estate value to non-resident beneficiaries as Part XII.2 tax may now apply. Therefore, existing trusts and estates must investigate the consequences of these measures and take appropriate action before the end of 2015, because there are no grandfathering rules for existing arrangements.

Testamentary trusts and estates which have already existed for three taxation years at the end of 2015 will be deemed to have a December year-end, with the first such year-end being December 31, 2015.

Also commencing in 2016, there will be expanded flexibility in claiming a donation credit for donations provided under the terms of a will and given within thirty-six months of the death of the deceased. Such

donations may be claimed for tax purposes in the year they are made by the estate or an earlier year of the estate, or even carried back as a credit in the last two taxation years of the deceased.

Another new measure calls for quarterly tax instalments for testamentary trusts and estates which exist beyond the three years. Previously, there was no instalment requirement.

We strongly suggest that all current wills be reviewed and restructured where necessary to avoid onerous, unanticipated consequences.

### JOINT VENTURE REPORTING OF GST/HST

The Canada Revenue Agency has announced that it will no longer respect the right of a nominee or *prêt-nom* corporation to file GST/HST returns or remit the tax (or receive a refund) on behalf of the joint venture. The joint venture arrangement with a nominee corporation as the operator is a structure typically used in the real estate industry.

This change will go into effect January 1, 2015 so it is critical to review existing arrangements and make changes where necessary.

Note that although Quebec is supposed to be harmonized with the federal laws in the GST area, at present Quebec is following a much more rigid path,

particularly when there is one beneficial owner and a nominee in the joint venture. In the latter case, we are advised that Quebec is denying two years of tax credits (which will be allowed to the beneficial owner in its own right) plus a 4% wash penalty.

### FOREIGN ASSET REPORTING TO CANADIAN AUTHORITIES (T1135)

We wish to remind you that the significantly revised form T1135 disclosing ownership details of foreign assets is due for the first time with respect to taxation years ending after June 30, 2013. There have been two new provisions announced since we last commented on the changes to T1135. Both are applicable to 2013 taxation years ONLY.

Firstly, the due date for form T1135, which normally coincides with the due date for the income tax return, has been extended to July 31, 2014 for all taxpayers.

The second pronouncement provides that taxpayers may opt to report under a transitional rule which applies to *foreign property held in an account with a Canadian securities dealer* (note that even if a foreign share or bond is held in a Canadian brokerage account, the security is still considered to be foreign, and therefore subject to reporting on the T1135). Instead of reporting the details of each foreign security in the account or claiming an exemption on that security due to T3/T5 income being reported, the transitional rule states that the combined value for all foreign property in the account may be reported. If reporting under the transitional rule has been selected for any account, that rule must be used in reporting for all accounts held through Canadian securities dealers.

The onerous nature of the additional information required for the new T1135 has already been described in a previous issue so will not be repeated here. However,

if you have not already done so, we would urge you to contact your broker or investment adviser immediately to gather the necessary information to complete the form.

### DISCLOSURE OF BUSINESS ACTIVITIES ON THE INTERNET

2013 tax returns require disclosure of business website addresses, including profiles, blogs, auctions, portals, and directories operated by third parties, if income is earned from those sites. The forms (T2125 for individuals and Schedule 88 for corporations) ask for the five addresses which generate the most income. The percentage of income earned from those sites (or an estimate) is also required. Note that if the site does not support web payments but facilitates any type of contact, such a site will be considered as a source of income. If 2013 returns have already been filed which do not include this information, amendments should be filed to include the appropriate schedule.

### FEDERAL GOVERNMENT ANNOUNCES THE ELIMINATION OF CHEQUES

The Federal Government has indicated that as of April 2016 federal payments will only be made in the form of direct deposits to a financial institution. Apparently, almost 79% of payments made at the present time are in the form of direct deposit. However, many businesses are not presently registered. Registration should be considered in the near future to avoid an interruption of service.

### DISCLOSURE TO THE IRS REGARDING U.S. PERSONS

The Canada Revenue Agency has now agreed to turn over financial information regarding U.S. individuals

to the IRS. This information will be collected from Canadian financial institutions effective July 2014. Canadian financial institutions will be required to ascertain whether their clients are U.S. persons but no disclosures will be made with respect to financial accounts which are RRSPs, RRIFs, RDSPs and TFSAs. In light of the upcoming sharing of financial material, if a voluntary disclosure to U.S. authorities is contemplated, the time to act is NOW.



The matters highlighted in this tax memo are presented in broad general terms and, of course, cannot be applied without consideration of all circumstances. The firm will be pleased to discuss with recipients the possible effects of these matters in specific situations.

**FOR ADDITIONAL INFORMATION, PLEASE CONTACT A MEMBER OF OUR TAX DEPARTMENT:**

**Ernest Furt, CPA, CA, TEP  
Partner**

T 514 908 4757

efurt@flmontreal.com

**Nick Moraitis, CPA, CA, TEP  
Partner**

T 514 908 4777

nmoraitis@flmontreal.com

**Marlene Gilfix-Raich, TEP  
Partner**

T 514 908 4761

mgilfixraich@flmontreal.com

**Stanley Clamen, CPA, CA  
Consultant**

T 514 908 4753

sclamen@flmontreal.com

**Harry Vouitsis, CPA, CA, LLB  
Senior Manager**

T 514 908 4783

hvouitsis@flmontreal.com

**Marcelle Breton, CPA, CGA  
Manager**

T 514 908 4798

mbreton@flmontreal.com

**Angela Sciola  
Manager**

T 514 908 4778

asciola@flmontreal.com

**Rebecca Li  
Tax Specialist**

T 514 875 2865, ext. 366

rli@flmontreal.com

**Sylvia Annett  
Tax Analyst**

T 514 875 2865, ext. 272

sannett@flmontreal.com

**Lori Gaudio  
Administrative Assistant**

T 514 875 2865, ext. 263

lgaudio@flmontreal.com



Member of the global network  
[www.leadingedgealliance.com](http://www.leadingedgealliance.com)

[www.flmontreal.com](http://www.flmontreal.com)  
info@flmontreal.com