COVID-19 – Keeping Up With the Tax Updates

Mar 31, 2020

By Neil Bass and Louise R. Summerhill

On Friday, March 27, the Canada Revenue Agency (the "CRA") released more updates to its administrative relief for income tax and HST filings. The new measures include delaying the due date for remittances of GST/HST to June 30, 2020, in respect of February to April monthly reporting periods, and January to March quarterly reporting periods. Similarly, deadlines to account for customs duties and GST owed on importation for March through May are extended to June 30, 2020. Further, all collection activities have been temporarily suspended with no known "restart" date, and all new and current audit activity is suspended. In fact, the CRA has indicated that any deadlines for responses to CRA correspondence and provision of documentation can be ignored. The CRA will contact taxpayers once COVID-19 measures are lifted. We note that the GST/HST Refund Integrity Program is considered critical, and activity will continue there, with some modifications, to ensure that refunds are not unnecessarily delayed.

All of these relief measures are welcome. Caution is advised however; the rapid updates are being created by press release and while certainly beneficial to taxpayers, there are some potential traps. For example, the extended timelines for GST/HST remittances are beneficial for taxpayers in a positive net tax position. However, what happens on June 30 if, despite best intentions, taxpayers do not have the funds to remit the net tax? GST/HST are deemed to be trust funds of the Crown. Directors facing assessments for a corporation's failure to remit are judged against what actions were put in place to prevent the failure. Usually funding business operations using GST/HST is frowned upon – will directors be able to demonstrate due diligence if they use the trust funds for any purpose during this window? Will they be expected to use the extended time to secure additional credit arrangements to pay the CRA on June 30? What if remittances for later periods (e.g. September 2020) are applied by the CRA to the COVID-19 suspended remittances, leaving outstanding debt for the later periods? Will directors have met the due diligence defence in those circumstances?

Taxation by press release is common in the current era and is welcome in these uncertain times. However, certain of the announcements create uncertainty. For example, the March 27 Backgrounder indicates that the date for filing objections due on or after March 18, 2020 is extended to June 30, 2020. However, the deadline for filing objections is legislated under the *Income Tax Act* (Canada) and the *Excise Tax Act* (Canada). It cannot be changed by administrative announcement. Parliament has not, to our knowledge, specifically extended the time as yet. Furthermore, the timelines for filing appeals to the Tax Court of Canada continue to apply, so if you filed an objection and a decision has been rendered confirming or varying the reassessment, the time period to appeal to the Tax Court is not changed.

At the end of the day, taxpayers can only do what they can do. What efforts are made to comply may make the difference to ensure taxpayers are not caught in unfortunate or unforeseen traps. As always, it remains best practice to document any such efforts. Easier said than done when taxpayers are trying to survive the financial implications of COVID-19.

****

Late breaking news – On Monday March 30, 2020, the federal government has announced that the income replacement subsidy will be available to all businesses, large and small, to a maximum of $857.00 per person per week.

Authors

Neil Bass
Partner
T 416.865.3071
nbass@airdberlis.com

Louise R. Summerhill
Partner
T 416.865.3416
lsummerhill@airdberlis.com