

PHILLIPS FRIEDMAN KOTLER
AVOCATS/LAWYERS

QUEBEC AGGRESSIVE TAX PLANNING RULES

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Mandatory Disclosure Transactions

- Tax benefit of \$25,000 or more
- Impact on income of \$100,000 or more
- Services of advisor retained
- Transaction on or after October 15, 2009

Mandatory Disclosure Transactions

- Confidential Transactions
- Transactions with Conditional Remuneration

Undertaking of Confidentiality

- Does not include
 - Client- professional privilege
 - Limitation of reliance on opinion

Conditional Remuneration

- All or part of advisor's remuneration
 - Conditional on basis of tax benefit
 - Refundable if tax benefit not obtained;
or
 - Only payable after Revenue Quebec
statute-barred

Conditional Remuneration

- Does not include:
 - Tax credit claims including R&D
 - Analysis or review of tax return after filing
 - Invoice by professional where Code of Ethics allows for results to be a factor when billing
 - Sales tax recovery reviews

Mandatory Disclosure Deadline

- Disclosure form TP-1079.DI-V (2010-04)
- Must be filed by filing deadline for taxpayer for taxation year in which transaction resulting in tax benefit or having an impact on income took place
- Same for partnerships

Failure to File Timely Mandatory Disclosure

- Suspension of reassessment period
- Where GAAR applies
 - Add 3 years to reassessment period

Failure to File Timely Mandatory Disclosure

- Late filing penalty
 - \$10,000 minimum
 - \$100,000 maximum

 - Where GAAR applies
- Penalty equal to 25% of tax benefit

Preventive Disclosure

- Transaction carried out on or after October 15, 2009
- Disclosure form filed by deadline for taxation year during which transaction began to be carried out
- Taxation years prior to October 15, 2009 must be filed by April 15, 2010

Failure to File Timely Preventive Disclosure

- Where GAAR applies
 - Add 3 years to reassessment period
 - Penalty equal to 25% of tax benefit

GAAR

- Amendment of definition of bona fide purposes
- Excludes:
 - Tax benefits
 - Tax reduction or increased tax refund under Quebec laws other than Taxation Act or under laws of another province or federal law.

GAAR

- Where GAAR applies:
 - Three year increase to period of limitation
 - No increase where preventive or mandatory disclosure occurs in a timely fashion

GAAR

- Penalty equal to 25% of the tax benefit
- No penalty where preventive or mandatory disclosure duly filed
- No penalty where due diligence defence

Promoter Penalty

- Where GAAR applies & where penalty imposed on tax payer
 - 12.5% penalty on amounts received or receivable by promoter

Promoter

- Marketed, promoted or encouraged
- Entitled to receive consideration
- Played a substantial role

Promoter

- Specified employee of promoter can play a substantial role
- Non-specified employee cannot play substantial role
- Conduct of employees deemed conduct of promoter

Promoter Penalty

- Tied to penalty of taxpayer
 - Disclosure or due diligence defence
- Due diligence defence of promotor

Preventive Disclosure

- Prescribed form TP-1079.DI-V
- Separate for each series of transactions
- Separate filing address
- Acknowledgement of receipt will be sent

Preventive Disclosure

- Complete detailed description of facts and tax consequences
- Sufficiently detailed to enable analysis of the series and understanding of the tax consequences
- Not an admission or confession
- 120 days to request additional information

Transitional Rules

- Mandatory Disclosure
- GAAR Bona Fide purposes
- Increase in limitation period
- Penalty regime
- Preventive disclosure

Draft Legislation

- National Assembly of Quebec
- An Act to amend the Taxation Act
 - Bill 96
 - Introduced May 2010
 - Article 1079.8 et seq

Federal Measures

- Federal Budget of March 4, 2010
- Reportable transactions
 - Contingent fees
 - Confidentiality
 - Results oriented contractual protection