Simplification of the Taxing Statutes

Background

The *Income Tax Act* (Canada) ("ITA"), the *Excise Tax Act* (Canada) ("ETA") and Provincial Corporate Tax Acts (e.g. the *Corporate Tax Act* (Alberta) "CTA") govern the taxation of the majority of transactions entered into by corporations and individuals. These statutes have seen significant amendments since enactment by technical amendments, budgets, Order in Council, income tax conventions, consolidations etc. As a result, these statutes have become difficult for the average business owner, employee or investor to interpret and understand. In some cases, even the professional advisors, the Canada Revenue Agency, the taxpayer and the Courts cannot fully understand the provisions. See, for example, *Hoffman v. H.M.Q.*, 2010 TCC 267 where C. Miller, J. states, at paragraph 13:

> The problem, I suggest, is that the system has become so complicated that not only the taxpayer is bewildered, but also advisors and those administering the Act can likewise scratch their heads wondering which way to turn

In J.F. Newton Ltd. and John F. Newton v. Thorne Riddell et al., 91 DTC 5726, Finch, J. of the Supreme Court of British Columbia said, in respect of section 55:

> It surpasses my imagination that anyone considers language such as this to be capable of an intelligent understanding, or that such language is thought to be capable of application to the events of real life, such as the sale of a business.

In submissions to the House of Commons Committee on Finance and Economic Affairs, the Joint Committee on Taxation of the Canadian Bar Association and the Canadian Institute of Chartered Accountants stated:

> For any taxpayer to pick up some of this legislation we are looking at here today and understand how these rules are going to impact him when he sits down to fill out his tax return is almost impossible.

Amendments to tax legislation arise as legislators attempt to deal with perceived abuses, changes due to jurisprudence, development of business opportunities not previously available (e.g. electronic commerce) etc. As governments change - new policies and ideas are introduced in the House of Commons and the Legislative Assembly eventually accompanied by revised legislation. Over time, it is inevitable that amendments to tax legislation will result in a statute containing a collection of piecemeal amendments, corrections, incentives etc. Legislation will inevitably become more complex, less understandable and more expensive to administer.

As the taxing statutes become more complex, businesses are required to devote an increasing amount of time to compliance matters (i.e. preparing and filing tax returns, information slips, reports etc.). Failure to meet the various compliance obligations can result in the imposition of penalties, interest and additional income or excise taxes in addition to sanctions, increased audit activity all of which results in even more compliance-related reporting.

Examples of complex transactions with high compliance costs include:

- Goods and services tax (or harmonized sales tax) administration (real property transactions, joint ventures, multiple jurisdictions)
- Uunincorporated contractor reporting
- Transactions with non-resident persons
- Ccalculation of "safe-income" in corporate reorganizations
- Provisions applicable to the sale of a business

- Sscientific research and experimental development.

A good tax system should be capable of being administered economically and should not impose significant compliance costs on the taxpayers and the governments which administer it. Moreover, the taxing legislation should be clear and simple. The more complicated the legislation, or complex the process, the less likely the system is of being administered efficiently and economically. That being said, it is understood that business transactions are conducted in a sophisticated and uncertain economy and some complexity and uncertainty are unavoidable.

Comprehensive reform of the Canadian federal tax system occurred in 1972 as a result of the recommendations made by the Carter Commission. These reforms resulted in the modern day version of the ITA. In 1987 the federal government introduced its "tax reform" budget containing significant amendments designed to simplify the tax system and make it fair for all taxpayers. The Alberta government has not introduced tax reform or simplification measures since the CTA was enacted. As there have been many significant amendments and revisions to the taxing statues since the above, a comprehensive review of the same is warranted.

A review of taxing statutes should include participants from a wide range of key stakeholders including taxpayers, academics, tax specialists, government departments (like Finance Canada and the Canada Revenue Agency) professional bodies (like the Joint Committee on Taxation, the Canadian Bar Association and the Canadian Institute of Chartered Accountants) and foreign governments.

Recommendation

That the federal government establish an expert committee that includes key internal and external stakeholders to, within a 36 month period, undertake a comprehensive review of taxing statutes with the objective of indentifying, recommending and ensuring the implementation of ways and means to simplify tax legislation, reduce compliance costs and ensure all tax payers are treated fairly, and to continuously monitor changes and publicly report progress at least annually.