

THIS MONTH:

- ◆ Corporate Directors Liability
- ◆ Business Investment Loss—Denied
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- ◆ Online Advertising Income
- ◆ Owner-Managed Business-Creditor Proofing
- ◆ CRA's Priority

Corporate Directors Liability

If a corporation (including a for-profit or non-profit corporation) fails to deduct, withhold, remit or pay amounts held in trust for the Receiver General for Canada (CPP, EI and GST/HST), the **directors** of the corporation at the time **may be held personally liable** along with the corporation to pay the amount due. This amount includes penalties and interest.

Where the directors take appropriate steps to ensure the corporation makes the necessary deductions or remittances, Canada Revenue Agency will not hold the directors personally responsible.

Business Investment Loss—Denied

In a Tax Court of Canada case, a mother had guaranteed the business loans for her son's corporation. Unfortunately, the corporation failed and subsequently the mother paid off the loans. The mother claimed business investment losses for the amounts repaid.

Her only motivation for the guarantee was to assist her son's business. She did not charge a guarantee fee and thus there was no possibility of investment income.

The Tax Court disallowed the business investment losses for the mother because she did not make the loan guarantees to earn income.

Solution— Charge an annual fee.



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CRA's Priority

In a recent Federal Court of Appeal case, the Court found that the Crown has priority over secured creditors regarding deductions at source that were withheld but not remitted to the Canada Revenue Agency (CRA)

The property is deemed to be held in Trust. The secured creditor is obligated to remit to the Receiver General the proceeds that arose from property received, to the extent of the unpaid balance owed to the CRA.

Owner-Managed Business-Creditor Proofing

Every business owner should be concerned about creditor proofing his assets. Here are several suggestions to consider:

1) Transfer assets out of the company:

- ◆ Place capital assets in a separate holding corporation so that subsequent legal claims that arise in the operating company do not affect these assets.
- ◆ Lease the assets in the holding corporation back to the operating company. It may be easier to sell the operating company in the future.
- ◆ Protect cash assets from potential claims. Pay tax-free dividends from the operating company to the holding company regularly.
- ◆ Establish a retirement compensation arrangement (RCA). This removes funds from the corporation as a tax-deductible expense and places the cash into a creditor-protected Trust.

2) Secure the business owner's assets:

- ◆ Secure the shareholder loans by establishing a general security arrangement to provide the shareholder priority over all unsecured creditors.
- ◆ Transfer assets to the lower risk spouse on a roll-over basis for tax purposes. If there were a future marriage breakup, this type of property would usually be equally divided between the spouses under the provincial family legislation, regardless of who owns title.
- ◆ An estate freeze would transfer the future growth of the assets to other family members.
- ◆ Transfer the assets into a Discretionary Family Trust to protect them from creditors. A Discretionary Family Trust permits the transferor to retain control over the assets. This would produce a taxable disposition unless the transfer is to a qualifying Spousal Trust or a Joint Partner Trust or an Alter ego trust.

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Padgett Business Services is dedicated to meeting the tax, government compliance, profit & financial reporting and payroll needs of businesses with fewer than 20 employees in the retail and service sector of the economy. This publication suggests general business planning concepts that may be appropriate in certain situations. It is designed to provide complete and accurate information to the reader. However, because of the complexities of the tax law and the necessity of determining whether the material discussed herein is appropriate to your business, it is important you seek advice from your Padgett office before implementing any of the concepts suggested in this newsletter.