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Marmer Penner Inc. Newsletter

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2009 Federal Budget – Family Law Implications

Finance Minister Jim Flaherty tabled the 2009 federal budget yesterday and many of the changes impact family law practitioners. The following personal income tax changes will impact one or both spouses' net disposable income and should soon be reflected in DivorceMate updates. However until then, family law specialists should consider these changes:

a) The basic personal credit has been increased from $9,600 to $10,320. As well, the upper limit of the lowest federal tax bracket has been increased from $38,832 to $40,726. Similarly the upper end of the second tax bracket increases from $77,664 to $81,452. In total, anyone who earns at least $81,452 in 2009 will save over $300 in income tax from these three combined changes;

b) The age credit for those 65 and older has been increased by $1,000 saving eligible taxpayers an additional $150. It should be noted that this only benefits taxpayers whose income does not exceed $75,032 at which point the age credit is fully phased out;

c) In accordance with the increases to the lowest tax bracket, the thresholds at which the Canada Child Tax Benefit and the National Child Benefit Income Supplement begin to be phased out will also be increased; and

d) Those planning home renovations with costs exceeding $1,000 will receive a 15% tax credit on improvements costing up to $10,000. Accordingly, someone who spends $10,000 to renovate and paint the

children's rooms will receive a $1,350 credit ($9,000 x 15%), which credit should be considered when determining the cost of what may be a Section 7 expenditure.

On the corporate side, we see the following:

a) The amount of active business income eligible for the small business deduction increases from $400,000 to $500,000 effective January 1, 2009. While this increase will allow business owners to earn more on an after-tax basis, it does so through an incentive for business owners to leave a greater amount of income inside the corporation. As a result, it may lead to lower amounts indicated as Line 150 income on the owners' personal income tax returns. Consider the example of three one-third shareholders who operate a business and always bonus down to the small business limit. If they now leave an extra $100,000 in the corporation, it will lower each shareholder's income by $33,333. If one of the shareholders is required to pay spousal or child support, it may be difficult to argue that he/she has access to any of this additional income retained by the corporation since he/she is in a minority position and the corporation is acting in a prudent manner to minimize corporate income taxes;

b) Faster write-offs are now permitted for computer hardware and manufacturing and processing equipment which means that those businesses whose depreciation expense on the financial statements mirrors capital cost allowance rates will now accelerate their depreciation expenses, thus lowering corporate income which may be considered for *Child Support Guidelines* purposes; and

c) Corporate tax returns along with other corporate tax filings such as T4 summaries must all be e-filed starting in 2010 for corporations with revenue in excess of $1,000,000. Accordingly, the look of the printout provided by the corporate accountant to the client may change. Readers may recall that many accountants provide their clients with a summarized version of personal income tax returns which are e-filed.

Lastly, lawyers practicing in the area of estates have reason to be pleased with this budget given that it comes on the heels of a dramatic crash in the value of marketable securities last year. Consider the plight of the

beneficiaries of an individual who died in August 2008 with $1,000,000 of marketable securities in an RRSP. That $1,000,000 was included on the deceased's 2009 terminal income tax return. By the time the marketable securities were distributed to the beneficiaries, they had dropped in value to $600,000. There was no mechanism to allow taxes to be reduced by this drop in value. The budget proposes to allow the amount of post-death decreases in the value of an RRSP or RRIF to be carried back and deducted against the deceased's income as filed on the terminal income tax return. This mirrors the pre-existing rule which allows an estate to carryback losses in the first year after death on non-RRSP investments.