HST ASSESSMENTS – SHOULD YOU APPEAL?

You’ve just been hit with an HST assessment. Should you appeal? Here are some factors to consider.

• **Is The Assessment Clearly Wrong?** Sometimes an auditor has simply not properly applied the law, or has failed to consider available exemptions or other relieving provisions. These assessments should be appealed.

• **Difficult Facts?** Sometimes there is disagreement in characterizing facts, or in how the law applies to particular facts. HST obligations can change dramatically depending on whether one person is the agent of another, whether what is being supplied is a good, service or intangible, etc. Asking the right questions often leads to additional facts which support an appeal.

• **Unclaimed HST Credits/Rebates?** Auditors must allow all taxpayer input tax credits and rebates when assessing for a particular period (called “auditing to net tax”). However, it is often left to the taxpayer to ensure that all credits and rebates are utilized, and an Objection may be required to minimize net tax, penalty and interest.

• **Penalties/Interest.** HST legislation provides for automatic interest (and 6% penalty for older assessments) on amounts owing. However, “wash transaction” relief may be available to limit interest to a flat 4% (e.g. if the purchaser could have claimed...
all the HST back). “Taxpayer Relief” provisions can also provide relief, but the grounds are not broad (and usually require a separate application beyond a Notice of Objection).

- **Director’s Liability.** Sometimes, owner managers simply want to “give up” if an assessment is large and the company’s assets are few, preferring to simply start a new company. Giving up is often a mistake, however, because director’s assessments normally follow on the heels of an unsatisfied corporate assessment. While the law is unsettled, there is caselaw to support the government’s position that a director cannot challenge the underlying assessment against the corporation. If a director’s assessment seems likely, corporate assessments should generally be appealed to ensure they are at the legal minimum.

   Other factors to consider include the amounts involved, the complexity of the issues, professional fees and, significantly, whether the taxpayer’s position passes the test of common sense!

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