STARTING YOUR OWN FIRM

Expect lenders to change their outlook

By NEEL ROBERTS

Starting your own business or practice is not just a dream for many, but very much a reality. Over one million businesses of all shapes and sizes will get underway in Canada this year and the figure will only grow as corporate refugee numbers increase.

If someone is thinking of joining this trend, it's no surprise. But suppose an accountant worked for a firm for many years as a practitioner and they want out — or maybe this economy has forced them out — how does the leap from stable employment to self-employment take place?

Most definitely, there are better tax breaks if you're on your own. However, your record keeping must be ramped up to substantiate all your claims.

Most employees have the majority of their expenses paid and are given instructions, so the need to incur costs or keep detailed records is minimal. This is simply not the case if one is self-employed.

The business owner's responsibilities will now spread from being janitor to president, including sales, management, financing and much more. Furthermore, the Canada Revenue Agency not only wants to see source documentation of all income and expenses, but a diary of meetings, trip logs, bank statements and drawings to owners/shareholders.

How do those who succeed do all of this and keep on top of the game? First of all, thinking patterns must change to accommodate the new situation. The self-employed accountant is no longer getting a regular paycheque.

He now has to build a sales list consisting of clients who will pay for the services the business has rendered.

This usually stops people dead in their tracks because that's a whole new concept which changes the way one receives money and all the processes accompanying it.

When the new business owner tries to get credit from the bank — a place they've dealt with for years— all of a sudden they're worse than bankrupt due to the skyrocketing risk factor.

Kelley Keehn (www.kelley-keehn.com), a former investment manager and author of several books on personal finances, emphasizes that "those considering the move should have everything like savings, credit lines and mortgages ready beforehand. Once you make the move and the paycheque is gone, the safety cushion the bank looks for (has) vanished."

It's no surprise that the banks have this approach. Nearly 90 per cent of start-up ventures fail within the first two years.

How are some people able to succeed?

The answer is simple: They realize after a short time the value of know-how. Not so much about doing the actual job, but all the factors that accompany it, from building the sale to delivering the finished product and keeping the cycle unfailingly going.

Marty Park (www.marty-park.com), in his business coaching enterprise, Evolve Business Group, teaches his clients the first thing to do is double their expenses and triple the time to succeed.

"New starts are way too optimistic on the results they will accomplish tomorrow," he says.

Park's clients burn through the learning curve much faster than those who aren't mentored, not because they have a lot of experience, but because they learn secrets quickly, like how to market for little or no money.

Motivational speaker Tony Robbins has a popular quote: "Most people overestimate what they can accomplish in a year — and underestimate what they can achieve in a decade."

Norman Friend (http://franchise101.net) co-authored a book

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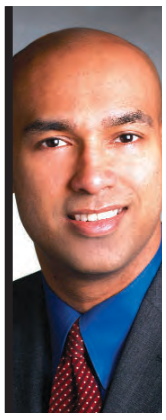
Determining for whom tax bell tolls



AIRD & BERLIS TAXLINE

By Ron Choudhury

The decision of the Federal Court of Appeal in *Telus Communications (Edmonton) Inc. v. R.* is a timely reminder of the need to weigh the GST implications of any transaction. The Federal Court of Appeal was asked to consider whether the appellant Telus Communications (Edmonton) Inc. should be entitled to input tax credits (ITC) or a rebate for payments made on the acquisition of certain telecommunication assets of a particular corporation.

The decision was released last February. However, the case was appealed to the Supreme Court of Canada and has recently been dismissed.

Telus had acquired the assets, undertaking, property, and goodwill of Edmonton Telephones Corporation effective March 10, 1995. Joint elections under subsection 167(1) of the *Excise Tax Act* were filed by the parties such that no GST was payable in respect of the transaction (on the basis that Telus acquired all or substantially all of the assets it required to carry on a business).

As part of the acquisition, Telus assumed certain liabilities for payments owing by Edmonton Telephones for supplies received prior to the effective date of the acquisition. The assumption of these liabilities by Telus formed part of the consideration for the acquisition.

Pursuant to its undertaking, Telus paid the amounts owing by Edmonton Telephones and included the GST invoiced as part of its payments. Telus claimed ITCs in respect of such payments, on the basis that it was the recipient of the supplies and that it was not otherwise entitled to a rebate or refund of the GST.

The minister of national revenue denied the ITCs claimed, on the basis that Telus was not the recipient of the supplies and was therefore not entitled to the ITCs. The minister also did not allow any rebate or refund in respect of the tax paid. Telus' appeal to the Tax Court of Canada was dismissed on the same basis.

A few provisions in the act are relevant. Section 165 provides that the recipient of a taxable supply must pay GST. An extended definition of recipient is contained in subsection 123(1), which states inter alia that where consideration is payable for a supply, a recipient is either the person liable under an agreement to pay that consideration or the person otherwise liable to pay that consideration.

The definition also noted that any reference to a person to whom a supply was made shall be read as a reference to the recipient of the supply.

Subsection 169(1) contains the general rule for ITCs. The 1995 version of the provision applied where property or a service was supplied to or imported by a person, and during a reporting period during which the person was a registrant for GST purposes, tax in respect of the supply or import became payable by the person or was paid by the person without having become payable.

Subsection 261(1) applies to rebates of payments made in error and allows for a refund.

The Federal Court of Appeal dismissed Telus' appeal from the decision of the Tax Court. In a brief decision, the court noted that subsection 169(1), when read with the definition of recipient, provides that only the person to whom a supply is made can claim the related ITC. Since the Tax Court found that Edmonton Telephones was the recipient of the supplies at issue, and since that finding was not challenged on appeal, the Federal Court of Appeal held that Edmonton Telephones was the only person entitled to claim the ITCs for the GST paid to its suppliers by Telus.

As may be noted from the definition of recipient above, since a person to whom a supply is made is considered a recipient of the supply, the definition of recipient applied for purposes of subsection 169(1), as it then read, such that ITCs were only available to a "recipient" of the supply (unless otherwise noted), i.e. a person required under an agreement to provide consideration for the supply or otherwise liable to pay that consideration.

The liability in this case was on Edmonton Telephones. Even though Telus had assumed the liability vis-à-vis Edmonton Telephones, the latter was not released from its obligations vis-à-vis third parties.

Addressing the claim for a rebate the court noted in paragraphs 30 and 31 of the decision:

"According to this reasoning, two persons could claim relief for the same tax, the recipient by means of ITCs and a third party who made the payment on behalf of the recipient by way of a rebate and/or refund. In my view, the Tax Court judge was on solid ground when he held that different persons cannot be entitled to make claims for the same amount under the scheme implemented by Parliament. The need for a streamlined approach is self-evident.

"Subsection 261(1) applies to a person who makes a payment 'as or on account of … tax, net tax, penalty or other obligation under this part..' It is common ground that the appellant had no obligation to pay tax under the act when it paid its suppliers. Subsection 261(1) does not apply to a payment made on account of someone else's tax."

Telus also argued that denying it the rebate would result in a windfall for the government. However, the court observed in paragraph 32:

"…Where a transaction, such as the one here in issue takes place, all that needs to be done in order to avoid the difficulty confronting the appellant, is to ensure that the person authorized to make the claim, does so. In the present case, the evidence indicates that the outstanding ITCs were not sufficiently material in the overall context of the transaction to attract attention so that the matter of the outstanding ITCs was left unattended."

This case is a stark reminder that GST issues should receive due consideration in transactions with GST implications. Nowhere is this more relevant than in the context of asset purchase transactions, where a buyer may be assuming pre-acquisition liabilities of the seller.

Parties would be well advised to act as agents for the seller in paying GST such that the ITC may be available to the seller. The acquisition price could then be adjusted to take such ITCs into account.

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Routine paycheques thing of the past

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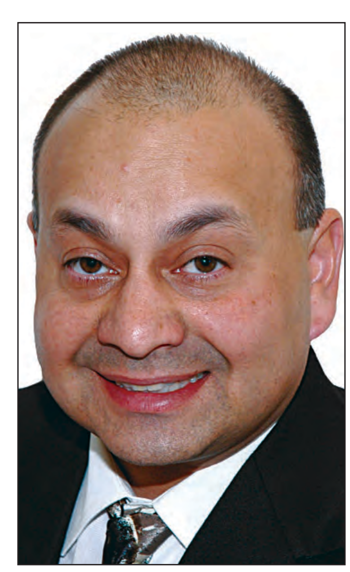
called *Be Your Own Boss: The Insider's Guide to Buying a Small Business or Franchise in Canada* in 2002 and it is full of valuable information.

Best-selling business author and speaker Brian Tracy (http://www.briantracy.com) encourages prospective business owners to learn as much as possible about a given trade, since that's what gives someone the edge.

Businesses are only as good as the substance behind them. This is the most information rich age in history, but it's the way the data is used that makes a difference.

The late J. Paul Getty attributed his success in the oil industry to being knowledgeable on how the business worked. Others would do well to emulate that.

Neel Roberts is the president of PTC Canada specializing in helping late tax filers across Canada. He provides one-on-one business coaching advice to new start up firms. Neel can be reached directly at (403) 485-2683, www.ptccanada.com.



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