The Top 10 Spookiest Halloween Tax Stories of 2019

Kim G C Moody FCPA, FCA, TEP
October 31, 2019

Happy Halloween! While Halloween has a very interesting history dating back hundreds of years, income tax in Canada and the United States doesn't have quite the same history – dating back roughly 100 years each. However, the first known taxation took place in Ancient Egypt around 3000–2800 BC. So, technically, Halloween is a youngster compared to taxation!

Halloween is famous for its spooky stories, poems, films and plays. A favourite Halloween story is *The Legend of Sleepy Hollow*. Many can likely recall being very scared listening to very deep voiced narrators of the story. As the font of all wisdom – Wikipedia – states: "*(t)he Legend of Sleepy Hollow" is among the earliest examples of American fiction with enduring popularity, especially during Halloween because of a character known as the Headless Horseman believed to be a Hessian soldier who was decapitated by a cannonball in battle."* Unfortunately, income tax hasn't had quite the same appeal for writers and producers. But that doesn't make tax any less spooky! Accordingly, in the spirit of Halloween, we present to you the Top 10 2019 Halloween Tax Stories. Please make sure you read these stories to your kids or other young ones tonight…we're pretty sure they'll be frightened!

10. *The Canadian July 18, 2017 Private Corporation Tax Proposals*

Much has been written about the ridiculous proposals released by the Canadian government back in 2017. Such proposals were so poorly thought out that – for example – investment income realized by a Canadian private corporation would have a flow through taxation rate of 70%+. On death, if you held shares of a private corporation, you could expect to pay between 82% – 93%. Frightening! Thank goodness some of the spooky aspects of the proposals were softened but some aspects of the proposals were enshrined into Canadian taxation law. Dealing with the new laws in 2019 – such as the revised tax on split income rules and the revised passive investment income rules – are scary!!

09. *A Possible Increase to Personal Income Tax?*

In 2016, as part of the new Liberal government's election policy platform, personal tax rates were increased by 4% for individuals that earned $200,000 or more. This raised overall personal income tax marginal rates in some provinces to over 50%. For example, in Ontario, the highest marginal tax rate increased to roughly 54%. During the 2019 election, the NDP campaigned to further increase the highest marginal tax rate by 2%. This would increase the highest marginal rate to approximately 56% in Ontario! Yikes! If the new Liberal minority government seeks support from the NDP, will such a personal tax increase be part of the conditions for support! If so, that's hair-raising!!

08. *An Increase to the Capital Gains Inclusion Rate?*

Similar to the above, the NDP campaigned recently to increase the current capital gains inclusion rate of 50% to 75%. Will this also be a condition for supporting the minority Liberals? If so, that is spooky!

07. *Owning Personal Use Property in a Corporation*

This story is an oldie. In fact, we wrote about this way back in 2009. But taxpayers never seem to get tired of this movie. The bottom line is owning personal use property through a corporation can result in double (and possibly triple) taxation. It is not a good idea that always provides for ghostly results! Don't do it.

06. *Canadians Who Own Interests in United States LLCs*

In general – with very limited exceptions – it's not a good idea for Canadians to hold assets or business interests through a United States LLC. We wrote about this back in 2013 (while some of the rates / numbers have changed since the time of that writing, the principles still remain the same). Instead, avoid this creepy story and ensure your investment in the United States is properly planned!

05. *A Wealth Tax Coming to Canada?*

Similar to #9 and #8 above, the NDP and the Green Party – as part of their election platform – proposed an annual wealth tax of 1% for "economic families" who have an aggregate net worth of $20M. Such a proposal is littered with issues. A wealth tax is not unheard of around the world but Canada has never had one. And in our view, if such a tax is introduced without the benefit of a comprehensive review of our entire taxation system, the results could be double or triple taxation! Chilling!

04. *Interest Deduction Limitations Coming?*

In their election platforms, both the Liberals and NDP proposed interest limitations that would significantly curtail the deduction of interest expense by a business that incurs significant interest costs. This would be a major policy change, if implemented, and would significantly hurt impacted corporations. We wrote about this change in our October 5 /16, 2019 blog. Bottom line: if this proposal gets implemented into law in Canada, this will end up with many Canadian companies getting…massacred!

03. *The Return of the Anti-Surplus Stripping Proposals?*

As most tax students know, the July 18, 2017 private corporation tax proposals contained a set of proposals that ultimately prevented the removal of corporate surplus as anything other than a taxable dividend. While the policy of preventing mischief in that area made sense, the proposals themselves were poorly thought out with significant double taxation, retroactive taxation and other problems. There was significant backlash and the proposals were ultimately withdrawn. However, given the sound policy objective, it is generally thought that a new round of anti-surplus stripping proposals will be released. Let's hope the next round is not the same nerve-wracking bag of tricks!

02. *US Citizens Resident in Canada Who are Not US Tax Compliant*

As many know, the US taxes on a citizenship and residency basis…one of only two countries in the world that taxes on a citizenship basis. There are a significant number of US citizens resident in Canada. Many of them don't even know that they are US citizens. For such persons, the required US tax and filing obligations are onerous to say the least. Regardless of whether you think this is fair or not, the simple fact is that US citizens are required to report their worldwide income – with significant reporting obligations – regardless of where they live. For US citizens resident in Canada who are not up to date in their required filings, this can result in a very scary situation. Thankfully, there are often happy endings to the scary story but not without some work. If you happen to be one of these persons who are not compliant with their required US tax filings, you need to put an end to this terrifying story soon!

01. *Implementation of the Proposed Amendments to the Employee Stock Option Benefit Proposals*

As we discussed in our recent blog, the previous Liberal government in the 2019 Federal Budget proposed to dramatically change the taxation treatment of employee stock option benefits. The reason put forward by the government for the proposed change was that the preferential taxation regime for employee stock option benefits was mostly being used by the “wealthy”. As discussed in our blog, this is highly debatable and certainly not convincing based on the material put forward by the Department of Finance. With the federal election now over, it is likely that the employee stock option proposals will move forward in their proposed form. If so, affected parties should be frightened and should start planning today!

Well, there you go. Our firm’s Top 10 2019 Halloween tax stories! Like Sleepy Hollow, make sure your tax situation is carefully considered so as to ensure that – like the Headless Horseman – you do not end up being decapitated by a cannonball in your tax battle.