

Sun Peaks July 29, 2011

Dear Committee,

My company had recently an tax audit for Non-Residents earning rental income from real estate in Canada.

My company (Bear Country Property Management Ltd. manages properties for many unit owners at the resort town of Sun Peaks, BC, including a number of non-resident owners.

Bear Country's general practice was to withhold for remit \$500 from each non resident in January and the file the NR6 undertaking. Bear Country would than assist the non resident owner's with filing their Section 216 returns at the end of the year. Since most owners would not show a profit after taking into account their expenses, the \$500 withheld would be refunded.

Recently the CRA audited Bear Country in connection with this withholding practices in 2009, 2010 and 2011.

- a) Although it appears that all the non-resident owners have filed Section 216 returns and have settled their Canadian tax liability in connection with rental income in Canada, the CRA took exception to Bear Country withholding practices.
- b) Specifically, Bea Country was required to withhold 25% of all gross rental income until NR6 undertaking was approved.
- c) THE CRA assessing Bear Country as follows:
 - I) A failure to withhold penalty of \$9,482.48 (10% of the amounts that should have be withheld) – subsection 227(8)
 - II) interest of \$6,566.53 (calculated on the amounts that should have be withheld) – subsection 227(8.3)
 - III) The total principal amount (\$94,825) that should have been withheld (subsection 215(6)) **even though the non-residents have settled their tax obligations with Canada:**
- d) The CRA indicated that after Bear Country has paid the withholding tax under subsection 215(6), the auditor will prepare amended NR4 slips. The non-resident owners can than request adjustments to their Section 216 returns and eventually receive refunds of the additional tax withheld.

Conclusion

Collecting tax under subsection 215(6) even though the **non residents have settled their tax obligations with Canada:**

- 1) **Punishes the taxpayer beyond what the law intended (the role of penalties and interest)**
- 2) **Is contrary to the government's stated commitment to taxpayer fairness**
- 3) **Reduces respect for the law**
- 4) **Creates unnecessary work for the CRA and consequently is a waste of our tax dollars**
 - a) **The CRA will have to prepare amended NR4 slips showing the additional tax**
 - b) **They will have to process adjustments to the non-resident taxpayers' previously filed section 216 returns and then refund the same tax dollars to the non-residents.**

In future non-residents will be not invest in Canada and the once who will rent out will not go through property management company and sell directly on the website or other channels as probably 50% or more already do.

Please feel free to contact me if you have any questions.

Kind Regards,

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