

Bayshore Merchant Services for International Asset Freezes Equity Participation in the Structuring

As an international tax practitioner, you are undoubtedly aware of the concept of an “international freeze” whereby a Canadian shareholder freezes his or her interest in an active Canadian business in order to transfer future growth to a non-resident entity (often a Trust). Given the favourable laws in Barbados a properly structured “international freeze” not only provides significant tax deferral opportunities, but also has the potential to offer complete tax avoidance for Canadian resident beneficiaries.

Given the technical nature and intricacies of the “international freeze”, to date we have not seen the same downward pressure on professional fees that we have witnessed in other areas of offshore planning (i.e. the cost to incorporate an offshore company or establish a non-resident trust). The professional fees associated with the structuring and implementation of a standard “international freeze” (i.e. legal and accounting fees, trust and protector fees, etc.) can be quite substantial. In the past several months we have met with a number of potential clients who either had inadequate cash flow or insufficient liquidity available to make an “international freeze” viable. Unfortunately there was no other adequate alternative for these otherwise suitable candidates. To address this concern, Bayshore Bank has recently incorporated Bayshore Merchant Services Inc. (“BMS”). The sole purpose of BMS is to take equity in the target company in exchange for the fees otherwise required to complete the “international freeze”. Given the right scenario, BMS offers a win – win scenario. The client achieves an “international freeze” without the outlay of any capital and BMS hopefully reaps the benefits of its equity interest at some future date. Avoiding the need for a capital injection by the Canadian resident may also prove invaluable in defending a Revenue Canada challenge contending that the Canadian resident provided “financial assistance”.

The equity interest that BMS would require will vary depending upon the specific fact scenario. BMS recognizes the involvement and role that a client’s existing advisors play and is prepared to offer an equity sharing arrangement, whereby BMS will hold a percentage of the equity shares in trust for the advisor. It may be possible to structure this ownership in a tax effective manner and also provide a significant degree of asset protection.

We recognize that giving up a percentage of equity may not be appropriate for a number of your clients, however given the right situation, the BMS plan makes good business sense. If you have any clients that may benefit from an “international freeze” we would be pleased to discuss the above in greater detail.

Our toll free telephone number is (888) 324-5456