Tax predictions for 2014 according to “Carnac the Magnificent”

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Toward the end of the year, tax practitioners tend to flood the blogosphere with “last minute tax tips”. We prefer to take a different approach because good tax planning shouldn’t be “last minute”… it should be done year round. Furthermore, those able to anticipate tax changes are favourably positioned to plan their affairs accordingly, and in a proactive manner. Before Jay Leno introduced his “Headlines” comedy bit and before David Letterman introduced the “Top Ten List”, Johnny Carson appeared on stage in an outrageous costume and used his mystical powers of premonition as Carnac the Magnificent. In an ode to the King of Late Night, and with apologies to Ed McMahon, we give you “Carnac the Magnificent” and an assembly of the following tax predictions for 2014.

1. Canada will implement a tax preparer registration system

The Canada Revenue Agency (“CRA”) has been musing about bringing a tax preparer system to Canada for some time now. It would appear that its objective is to try to weed out the unsavoury tax preparer and to protect the public. We’ve written about this before and believe that it is about time for its introduction in Canada. Other countries, such as the United States, have had tax preparer registration systems for quite some time. While the US registration system is currently being challenged in the Courts, most commentators believe that such challenge is only a short term hiccup. What remains unknown is exactly how and when Canada will introduce its registration system. Will tax preparers need to complete exams to be able to get initially registered? Will there be ongoing professional development requirements? This appears to be a closely guarded secret but our prediction is that Canada’s registration system will be introduced in concept in 2014. We also predict that Canada’s registration system will not be modelled like that of the US. We believe it will initially be simpler. Stay tuned.

2. Canada will execute an intergovernmental agreement with the US to administer the US’s Foreign Account Tax Compliance Act (“FATCA”)

Canada is home to many US citizens. Such people have very laborious tax filing requirements given the fact that the US is only one of two countries in the world that taxes on a citizenship basis. Can you guess the other one? If you guessed Eritrea, you guessed right! For those of you who need a brush up on Eritrea, more information can be obtained from the font of all knowledge, Wikipedia. Many US citizens resident in Canada have only in recent years become aware of their filing requirements. Accordingly, the prudent non-tax compliant US citizen has been diligent about getting their tax filings caught up. The US has introduced a number of voluntary disclosure programs and a “streamlined” filing procedure in an effort to encourage such people to get back into the system. However, there are also many non-tax compliant US citizens who are “playing ostrich”, purposely not filing or doing “quiet disclosures“.

That’s what FATCA is about. It is a massively broad piece of US legislation that became law a few years ago. Overly simplified, it imposes US filing obligations on foreign financial institutions and non-financial foreign enterprises. In Canada, there have been a lot of complaints and open musings about whether or not Canada should or can comply (privacy and constitutional issues). However, let's not kid each other… Canada will comply with FATCA. The Department of Finance is currently negotiating an intergovernmental agreement with the US regarding how Canada will comply with FATCA. Expect such agreement to be completed soon with implementing legislation to be introduced to Parliament shortly thereafter.

Regardless of what you think about FATCA, all right-minded people will agree on two things: First, Canada must implement an intergovernmental agreement with the US because without doing so, Canadian banks and other businesses will be placed in the unenviable position of being forced to deal directly with the IRS on its implementation.

Second, Canada can't afford to be exempted from FATCA's reach. One of the purposes of FATCA is to force transparency in the banking system and, ostensibly, catch bad actors. If the US were to exempt Canada from FATCA (which it would never do) all the bad actors FATCA was designed to catch would flock to Canadian banks and businesses.

FATCA is scheduled to become effective July 1, 2014 although there have been a lot of people requesting that the US delay the implementation date to 2015 or later. Our prediction is that FATCA will not be delayed. Accordingly, time is running out for the non-compliant US citizen. In fact, the IRS openly mused recently that once FATCA is implemented that perhaps their voluntary disclosure programs may be redundant. Wow… non-tax compliant US citizens and their advisors need to be ready.

3. A tax designation is coming to Canada

Some countries around the world offer a credible and recognized tax designation for certain qualified persons who specialize in advising on tax matters. For example, the UK (and now a number of other countries) offer the Chartered Tax Advisor ("CTA") designation through the Chartered Institute of Taxation. Last week, the Canadian Tax Foundation sent a note out to its members giving them advanced notice that in early January 2014 it would be polling its members to get their views on whether or not a specialized tax designation has a place in Canada. This is not a new topic. For example, the Canadian Institute of Chartered Accountants studied such a topic approximately 12 years ago but ultimately abandoned it. A lot has happened in the last 12 years though, and it appears that some stakeholders are studying it again. With the pending merger of the accounting profession into one body under the Chartered Professional Accountant ("CPA") brand, this also adds an interesting element. For Canadian tax specialists who believe that a separate designation has more pros than cons, 2014 will be an interesting year.

4. Intellectually disingenuous debate on the morality of tax avoidance will linger

Our firm recently wrote about this issue and therefore more ink will not be spilled on this topic again here. However, suffice it to say that we believe that this issue is likely not going away anytime soon. Hopefully politicians, journalists, academics, tax administrators and others who believe that tax avoidance is immoral will be open to a more well-rounded debate in 2014 rather than simply relying on the logically non-attackable position that people should pay their "fair share". Of course people should pay their "fair share" but what is "fair" is in the eye of the beholder.

However, the continued desire for tax transparency by tax administrators around the world will likely cause tax return preparation and planning to become much more laborious than it already is. For example, Canada's introduction of its revised T1135 form to report certain foreign property has caused fits amongst accountants who are preparing to file tax returns for their clients for the 2013 tax year. Our prediction is that complicated filings to “improve tax transparency” will continue to be introduced during 2014.

5. The 2014 Federal Budget will be the most interesting on record as parliament seeks to close tax loopholes

It’s a little early to start speculating on what will be in 2014 Canadian Federal Budget (likely to be introduced in March 2014). However, it is likely that the “closing tax loopholes” theme will continue. We’ll speculate in a little more detail once the “leaks” start to occur in the next few months. The Standing Committee on Finance released its report The Future We Want: Recommendations For the 2014 Budget earlier this month and it is worth a read to get some hints of possibly what is to come.

6. Tax simplification will occur ONLY when modern economies become less complex, which will not be next year

Tax simplification has received a lot of press recently. In addition, certain countries have responded to calls for tax simplification by introducing formal offices. For example, the UK has introduced an Office of Tax Simplification. While we believe that certain provisions of the Income Tax Act in Canada could be abolished, amended or streamlined in a way that simplifies it for a certain tax audience (like very small business owners), the idea that the Income Tax Act could be reduced to a small number of pages like it was in its infancy is fantasy.

The simple truth is that society in general, and modern economies in particular, have become very complex and tax legislation is responsive to such complexity. Indeed, as mentioned above, as Parliament seeks to eliminate loopholes the Act becomes more complex. We don’t believe that life will become simpler anytime soon and thus tax legislation will continue to respond with unfortunate complexity. Notwithstanding, anytime a system can reduce unnecessary complexity or redundancy then that is positive. Watch for tax simplification to become a more hot button topic in 2014.

While Carnac the Magnificent would end his prognostications with a well-timed curse (*“May you be forced to visit a near-sighted proctologist”*), we’ll instead end with best wishes and hope for a tax-positive 2014!