

HOT TOPIC!

If You Are Selling Your Business . . .

The Federal Court of Appeal's recent decision in *Manrell* (2003 DTC 5225) may influence future buy-sell agreements and help the vendor "net" more after-tax dollars. For anyone currently looking to sell a business, this is particularly important to know, as it may affect how the buy-sell agreement is structured—and how much tax may be saved!

The Manrell Decision

This recent Federal Court of Appeal decision provides more support for the tax-free receipt of non-compete payments received as part of consideration for the sale of a business. This is significant, as it is CCRA's *second* defeat in their attempts to have such proceeds taxed, the first case being *Fortino* (2000 DTC 6060).

In 1995, Manrell sold his business with a portion of the proceeds being received as a non-compete payment for which Manrell agreed not to compete in a defined geographic area for a certain period. After the *Fortino* decision was announced, Manrell filed a Notice of Objection to amend his return to report those proceeds as a tax-free receipt, similar to that earlier case.

The Federal Court of Appeal determined that the non-compete payments were proceeds for a "right to compete," and that these proceeds do not meet the statutory definitions of "property" or the phrase "a right of any kind whatever." As such, the Court concluded that the payment fell outside the domain of the *Income Tax Act*: that means it was a tax-free payment!

This is great news. The vendor of a business, however, must still consider *all* specific facts and circumstances before determining the tax treatment of such payments. CCRA typically only follows negative Court decisions when a taxpayer's facts are identical to the precedent.

Further, it is not at all unexpected that CCRA will take another "run" at this issue! ▲

Kathryn Edwards, CA, is a partner with Pagnanini Edwards Lam, Chartered Accountants.

kathy@accountantsplus.ca