ROSEN KIRSHEN

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August 30, 2019

VIA EMAIL: EDGE Highshare Clients

WITHOUT PREJUDICE

To Whom it May Concern,

Re: Rosen Kirshen Tax Law's Response to Edge Highshare Update – August 2019

It has recently been brought to our attention by various clients that Highshare and Mr. Mark Laurin provided Edge Highshare franchisees with an August 2019 update.

In order to inform you all using the most cost-effective method, we thought it would be best to prepare our response in letter format. As such, please read below for our critique of this update and our position regarding the various statements made.

For your convenience, we have prepared our response inline and preproduce the relevant excerpts from the mass email:

"Dear Franchisee,

You may have received reassessment notices or proposals from CRA, or you may receive either soon. For your protection, it is very important that you forward **scanned** copies of all CRA correspondence to my office upon receipt. (Pictures will be rejected). In almost all cases, there are response deadlines which must be respected, and of course, my office also needs time to process."

Mr. Laurin is correct that CRA response deadlines should be respected. However, we do not believe it is in your best interest to forward the reassessments or proposals to Mr. Laurin. This falls within our mandate and as your authorized representatives we are privy to such correspondence. It appears that the communication from Edge to the CRA has been strategically selected by the Secure Share team. It has been displayed on various occasions that Mr. Laurin and his team are more focused on protecting themselves than fully complying with the CRA's audit or protecting you. However, this decision is ultimately yours but remember that you have retained us for the sole purpose of advancing your interest in these matters to the fullest.

ROSEN KIRSHEN

"Please use ONLY the following email address and please do not copy anyone else as it creates confusion: nperkins@secureapps.cloud.

Upon receipt, you will receive an email acknowledgement so that you also know we have your submissions."

This request deserves a two-fold response.

Firstly, it has come to our attention that "nperkins@secureapps.cloud" is an email account associated with the name Ms. Nicole Laurin-Perkins ("Nicole"). A contact of ours confirmed that Nicole is Mr. Mark Laurin's sister. As such, clients should understand that there is context to this email contact. Clients should not be fooled into thinking this an employee of Mr. Laurin who is working at non-arms-length.

In addition, our clients have continually forwarded all correspondence from the related entities – which include Mark R. Laurin, CPA, Professional Correspondence. Most of these emails from Nicole include only her first name. However, some earlier correspondence provides the following signature:

> *Nicole Laurin-Perkins*
> *Tax Administrator*
> *Mark R. Laurin, CPA, Professional Corporation*
> *1060 Guelph St – Lower South Unit, Kitchener, ON, N2B 2E3*

Furthermore, some of the correspondence she sent included your confidential contact information – mainly your email addresses. Some of the clients then began to "Reply All" to the entire contact list in an attempt to talk with one another and discuss next steps in rectifying their situation against Edge Highshare. We are assuming he is trying to nip these conversations in the bud. It is our position that all Edge Highshare clients should be speaking to one another, both to discuss options and to discuss what has happened to them.

There is no better way to understand context than to talk to other individuals who have been dealing with the same issues.

As discussed above, we implore all of you to communicate with your fellow franchisees. In furtherance of this objective, if you feel compelled to advise your fellow franchisees about their dispute resolution options and the nature of our working relationship – feel free to do so. You may also include a copy of our dispute resolution memorandum.

For those interested, we will be hosting an information session in the Kitchener/Waterloo region in late September. We hope, that at this session, many of you can connect and discuss your stories with one another. In addition, we will be there to explain the various complexities of this matter and how to best approach next steps. We will advise you all of the exact date and location.

"As we know, CRA has taken the position that Edge/Highshare is a Tax Shelter. Their position is based on their opinion that the Promissory Notes are not full recourse notes. In support of this opinion, CRA points to the fact that the Franchisor has not to date legally pursued the minority of franchisees who have not made their full franchise payments."

This is true. A part of the CRA's complex position taken regarding Edge/Highshare includes this position. Unfortunately, this places the taxpayers in a difficult situation.

However, the failure to pay does not take away from the notes themselves being full recourse. As many of you know, there are notices of arbitration being sent. The actions of third parties, mainly Edge in this matter, and their decision not to pursue the legal right to enforce payment is not within your power or control. Essentially, they are protecting the legal arguments of the program being legitimate by pursuing arbitration.

"That seems like a strong point until you consider the history of Edge/Highshare at the hands of the Sûreté du Québec. Likely by design, the company was all but destroyed by the inappropriate actions of the SQ which yielded not a single accusation, let alone any charges. The entire investigation was simply dropped without explanation or retraction."

This is a very brief summary of the Edge/Highshare matter dealt with by the Sûreté du Québec and the Autorite des marches financiers (AMF). While we cannot speak to the accuracy of newspapers, articles and other avenues of reporting, there are a lot of facts being left out here by Mr. Laurin.

Mr. Laurin is correct, criminal charges were dropped in 2017 against the individuals behind Edge Highshare in Quebec. Charges were dropped because the government entity did not have strong enough evidence to meet the high standard of proof to proceed with criminal charges due to the complexity of the matter.

Upon criminal charges being set aside, the AMF took over the investigations on the civil side, the civil side having a lower threshold for evidence to lay charges than criminal.

The original respondents (potential defendants) in the Edge Highshare matter were Claude Duhamel, Benoit Mercier and Helene Lavallee. Mr. Duhamel pled guilty in 2015 to tax fraud in the Prospector matter, which had been ongoing since 2011. The $1.4 million fine imposed on Duhamel in 2015 by the CRA was added to the $302,000 fine imposed by the AMF in 2014 for illegal collection of funds. Duhamel was also banned from practicing the profession of "broker" in 2003 for 10 years after "fooling investors".

Despite these fines and reprimands, Duhamel continued to offer a similar product with Edge Highshare, through the use of a nominee. The Surete de Quebec seized documents during their search concerning an agreement between Duhamel and a member of his family, David Cournoyer, which showed that Cournoyer was a 90% shareholder in Edge Highshare, when in reality, this stake was owned by Duhamel through his company Yaro Consulting.

To our knowledge, the Edge Highshare matter is still being investigated by AMF. However, we cannot comment for certainty because we have not had any dealings with said government agency. Thus, while Mr. Laurin is correct that criminal charges were never brought, there is more context than is provided. Our explanation of the above is based on our review of the media and should not be taken as being full context or advice.

"In light of such extraordinary circumstances and the understandable fear and confusion it brought, the Franchisor correctly chose not to aggressively pursue delinquent franchisees until all other non-adversarial means had been exhausted. After all, the Franchisor wants to be in business with and has always supported its franchisees. Therefore, combative legal actions must always be a last resort."

We agree that combative legal actions must always be a last resort. In addition, we agree that pursuing the promissory notes makes matters very confusing.

In addition, it is true that the CRA's position regarding the recourse notes puts you all in a very difficult position. Essentially, the CRA is arguing that the promissory notes are limited recourse (Highshare cannot enforce them in full), which would have major implications on the legitimacy of the tax shelter. To support their claim that the tax shelter is legitimate, Edge Highshare must pursue arbitration/legal action to enforce the notes (thus, making them "full recourse"). This is what they are now doing.

Again, their action or inaction does not impact the characterization of the notes. The full recourse nature of the notes are legal rights outlined in the promissory notes themselves.

"Unfortunately, while regrettable, it has become necessary to move forward with litigation to protect the business and the over 400 franchisees in good standing. Accordingly, we have started legal proceedings against an initial group of delinquent franchisees who have each been served with an arbitration notice pursuant to their franchise agreements. We will follow suit with all remaining delinquent franchisees very soon. We strongly believe this will also serve to satisfy CRA's criticism on the matter and negate their claim."

By pursuing the promissory notes with legal action, Highshare is supporting its position that the tax shelter is legitimate. This places us in a difficult position for clients who may be delinquent in their payments as we do not want to recommend taxpayers pay any more money to Edge Highshare until a decision is made by the court regarding the program's legitimacy.

Again, **suspending such payments until a final determination is made about the Franchise program seems to be the common and preferred approach**.

"Furthermore, most of the reassessments are being issued against returns that are Statute Barred, which means they are too old to be reassessed. This further means that the onus of proof is on CRA to demonstrate that Edge/Highshare is a Tax Shelter. This works greatly in our favour. As you already know from previous communications, it is the considered opinion of our legal counsel that Edge/Highshare does not qualify as a tax shelter under the published definitions within the Income Tax Act."

While Mr. Laurin is correct that many of the years being reassessed are statute-barred, this does not matter if "misrepresentations" were being made on the returns. If the CRA can prove that misrepresentations were being made by taxpayers, they can open tax returns for reassessment dating back an additional seven (7) years.

So, while he is correct that the onus of proof is on them, it is likely they could reassess taxpayers if they can prove misrepresentations were taking place on the returns. This argument hinges on the legitimacy of the claims mentioned above.

While the burden rests squarely on the CRA to prove that a misrepresentation was made on your return, based on our experience it appears that the CRA does so with ease.

"Lastly, CRA has recently added a fallback position in the very likely event they are not successful in proving that Edge/Highshare is a Tax Shelter. The fallback position is to deem the asset purchase to be a software lease instead of a depreciable asset. This would render the tax deductions only applicable against income generated from the franchise business as opposed to many forms of income. This clearly demonstrates they don't believe their Tax Shelter position is defendable let alone winnable. Thankfully, their fallback position has already been defeated in the Durion Case so we have established jurisprudence on our side."

This is a presumptuous statement by Mr. Laurin. Legal representatives **always** advance alternative positions from their original position in their representations, pleadings, drafts or any other document that they are stating their case. Especially in the early steps of proceedings, lawyers raise every potential argument and alternative argument that they can rely on.

Just because there are alternative arguments being advanced does not mean that the CRA believes that there is strength, or lack thereof, in their primary position. Alternative arguments are always brought forward by legal representatives.

Mr. Laurin merely refers to recent case as "Durion". Unfortunately, without any direction or citations, we cannot comment extensively on this case or the judicial decision stemming from it. That said, it has also been our position in the representations that we have drafted that the program is a "license" and not a "lease". While true, it is possible that both sides have room to argue and interpret. We do not believe that either side is a "slam dunk" case. This question will likely have to be litigated.

"Please keep in mind that CRA can assert whatever it wants. That does not make it fact. It is CRA's role to interpret the Tax Code and apply its interpretation to each audit, however, the ultimate authority is the Tax Court – NOT CRA."

This is correct, and it is our major focus moving forward as well.

Furthermore, it is for the above reason that we have encouraged many of you to by-pass the CRA appeal stage in an effort to obtain an impartial and independent decision from the Tax Court.

"Likewise, it is our understanding that CRA auditors and audit departments are assessed according to the total number of dollars for which they issue reassessments regardless of the ultimate outcome in Tax Court. Sadly, the system is flawed to encourage reassessments without merit for the sake of job performance "points"."

We cannot comment on this statement as we have no proof of the assertions. However, in our experience, it is likely that CRA employees do receive "indirect" incentives for their "performance".

"Reprehensibly, some CRA auditors and CRA audit departments seem to believe it is an acceptable practice to attempt to scare taxpayers so they will never consider any sort of alternative tax planning in future even with a legitimate tax-advantaged business opportunity like Edge/Highshare. Do not succumb to these tactics. You have rights and you are not alone in this process."

You DO have rights and you are NOT alone in this process. We are here to help and that is why we ask that you communicate with your fellow franchisees to inform them of our working relationship. As we have discussed, we are putting forward best efforts to split the costs of our fees amongst you all who are at similar stages in the process. To date, this has proven to be challenging since we commenced our relationship at varying stages. However, we managed to align a lot of you. At the present, the 2013 and 2014 clients will see a notation on your docket "SPLIT" – which indicates a fee split.

"Next Steps for franchisees in good standing*:

1. Make sure to send us any correspondence from CRA upon receipt.
2. If requested by my office, you may need to provide us with a copy of the T2125 Form (Statement of Business Income & Expenses) submitted with your personal tax filing for any year being reassessed. Please note - the T2125 Form we need from you is NOT the same as the document supplied to you by my office entitled "Business Statement"."

   This seems odd if Mark Laurin and his team were the ones who prepared your income tax filings, presumably they would have access to your T2125 Statements.

3. If you have not yet done so, please sign the attached T1013 to authorizing our lawyers (Davies) to respond to the Notice of Reassessment with a Notice of Objection on your behalf. This will completely STOP all harassment from CRA while the audit decision is appealed with the recently assigned Appeals Officer.

   By doing this, you will not "stop all harassment from the CRA". Essentially, the representative would handle the audit and the CRA appeal on your behalf. If you are a client of ours, this is already being handled by us, an independent representative from those representing Edge Highshare.

   As outlined in our correspondence with you individually, some of our clients are choosing to go to the CRA Appeals Division with this. On the other hand, other clients are choosing to by-pass appeals and go directly to Tax Court. Both are options for you, as a taxpayer.

   Mr. Laurin mentions that Davies has been hired to represent Edge Highshare's interest in these matters. While this might be an attractive proposition to some taxpayers, it is important you are informed about the implications this has on bolstering your case.

   Firstly, it seems to be implied that if you, the investors, maintain good standing on interest payments with Edge Highshare, you will receive "free representation". This implies that you need to pay the full amounts to be included in this free representation. While you may be inclined to proceed in this manner, being represented by Edge Highshare's lawyers is not necessarily the best option.

   As some of you know, the position we have taken in our representations is that the tax shelter was legitimate. As an alternative position, if the CRA Appeals Division or the Tax Court determine that this is not true, then we argue that **all** gross negligence penalties should be directed towards Mr. Mark Laurin and the promoters/representatives, not you. While we cannot be sure, we presume that Davies will not be taking a similar position on your behalf if they are being hired by Edge Highshare and Mark Laurin.

   While Davies is a respected law firm, and we believe they are good at what they do, we believe it is best for taxpayers to have independent legal representation from the promoters and program that could ultimately cause severe economic distress if all goes poorly. That said, this decision is up to you in the end. These comments are merely to provide context to the letter sent by Mr. Laurin.

4. We will wait to see CRA's next action. If there is no reversal from the Appeals Officer, we will immediately consider a group action on behalf of all franchisees in good standing in Federal Tax Court to obtain a final ruling and win just like Prospector.

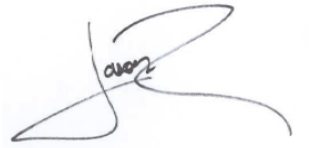
Note: Mr. Laurin is leaving out clients who are delinquent in payment of their promissory notes here.

In addition, as a taxpayer, you have the right to by-pass the appeals stage and apply to go directly to Tax Court. In our opinion, this prevents you from allocating resources to representation at the appeals stage, thus making it more financially reasonable to fight this matter at Tax Court. As outlined in our previous correspondence, we plan to also split costs moving forward for all clients in similar years. This split is occurring at the CRA audit level, appeals and at Tax Court.

We trust the above provides you with some context to Mr. Laurin's update. However, if you have any further questions, please do not hesitate to contact me at my direct line or email.

Yours truly,

ROSEN KIRSHEN TAX LAW



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