

## Tax Tips & Traps – 3<sup>rd</sup> Qtr 2010

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### PERSONAL TAX

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#### APPRENTICESHIP GRANTS

##### Apprenticeship Incentive Grant (AIG)

The AIG is a taxable grant of \$1,000 per year up to a maximum of \$2,000 per person, available to registered apprentices once they have successfully completed their first or second year/level (or equivalent) of an Apprenticeship Program in one of the Red Seal Trades. There is a deadline to apply.

##### Apprenticeship Completion Grant (ACG)

The ACG is a \$2,000 taxable grant to encourage apprentices registered in designated Red Seal Trades to complete their Apprenticeship Program and receive their certification. Eligibility is retroactive to January 1, 2009.

The ACG is offered to apprentices who complete their training, become certified journeymen/journeywomen in a designated Red Seal Trade and who obtain either the Red Seal Endorsement or a provincial or territorial Certificate of Qualification.

There is a deadline to apply.

Trades Included in the Red Seal Pro-

gram

To date, there are fifty trades included in the Red Seal Program on a national basis. For a list of Red Seal Trades, Google “Red Seal Trade”.

#### MEDICAL EXPENSE - TUITION COSTS

In a January 20, 2010 External Technical Interpretation, CRA notes that where, due to a physical or mental handicap, a student who is certified to require specialized care, or care and training, at a school or institution, may claim a medical expense tax credit for the cost of such care, or such care and training.

#### MEDICAL EXPENSES

In a February 2, 2010 Tax Court of Canada case, the taxpayer had progressive Multiple Sclerosis and successfully deducted as a medical expense the amount paid to the Huron Lodge (a home for the aged) in Windsor, Ontario.

#### NURSING HOME

The Income Tax Act provides a medical expense for full-time care in a nursing home if the patient has been certified by a medical practitioner to lack normal mental or physical capacity, and in the foreseeable future will continue to be dependent on

others.

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### EMPLOYMENT INCOME

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#### OVERTIME MEAL ALLOWANCES

Starting January 1, 2009 where an employer provides overtime meals or an allowance for overtime meals to its employees, the CRA will not assess a taxable benefit where:

- the amount of the overtime meal allowance, or the cost of the meal, is reasonable;
- the employee works two or more hours of overtime right before or right after his/her scheduled hours of work; and
- the overtime is infrequent and occasional in nature. (CRA generally considers less than three times a week, or more in special circumstances, as being infrequent and occasional.)

CRA will generally consider an amount not exceeding \$17 as being reasonable.

#### IN-SERVICE PROGRAM WHICH PROVIDES A LAPTOP COMPUTER

In a January 6, 2010 External Tech-

nical Interpretation, CRA notes that it has considered several programs where employers have provided their employees with personal computers, printers, software and/or Internet access for developing their employees' computer and Internet skills.

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## **BUSINESS/PROPERTY INCOME**

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### **TRUCKS OR TRACTORS FOR HAULING FREIGHT**

The Income Tax Act provides a 40% Capital Cost Allowance rate for a truck or tractor designed for hauling freight and that has a "gross vehicle weight rating" in excess of 11,788 kilograms.

In a CRA Technical Interpretation, CRA notes that this may apply to a taxpayer that hauls its own freight.

Also, in an October 9, 2009 Technical Interpretation, CRA notes that garbage trucks used for the collection and hauling of residential and industrial waste would normally also qualify.

### **EVENTS AT A GOLF CLUB**

In a January 22, 2009 Technical Interpretation, CRA notes that where a business holds a day of golf for all employees and the company pays for the green fees, rental of golf equipment, and food provided to the employees, the Income Tax Act does not allow a deduction in respect of any expenditure for the use of a golf facility.

However, with respect to the meals, CRA notes that a golf club facility does not include the dining room,

reception hall, conference room, lounges or a bar of a golf club so the deduction of expenses incurred to buy food and beverages is not restricted by the golf facility rules.

Also, assuming that the food was offered to all employees, and it is one of six special events held in the year by the company, the Income Tax Act allows a 100% deduction for the food and beverages, as opposed to the 50% which is normally allowed.

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## **OWNER-MANAGER REMUNERATION**

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### **THE TWO-YEAR LIMIT**

In a March 5, 2010 Tax Court of Canada case, CRA assessed Mr. M., as the "de facto director" of the corporation, for the unpaid GST (plus interest and penalties) owed by a company.

The taxpayer had resigned as a director on January 15, 2004 and the assessment was not issued until more than two years later, June 29, 2006.

### **Taxpayer Wins!**

The Court noted that, even though the Excise Tax Act provides a two-year statute of limitations, a person who is not a director may be considered a "de facto director" if they hold himself/herself out as a director such that a third party relies upon that person's implicit authority as a director. In this case, the taxpayer was not a "de facto director" of the company.

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## **2010 FEDERAL BUDGET**

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On March 4, 2010 the Honourable Jim Flaherty, Minister of Finance, presented his fifth Budget to the House of Commons.

The Government's fiscal positions include deficits in the years 2009/2010 (\$53.8 billion), 2010/2011 (\$49.2 billion), 2011/2012 (\$27.6 billion), and 2012/2013 (\$17.5 billion).

Some proposals include:

### **A. PERSONAL INCOME TAX**

#### **1. Medical Expense Tax Credit – Purely Cosmetic Procedures**

Budget 2010 proposes that expenses incurred for purely cosmetic procedures (including related services and other expenses such as travel) be ineligible to be claimed under the Medical Expense Tax Credit. This generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

These expenses will also become subject to GST/HST.

This will apply to expenses incurred after March 4, 2010.

#### **2. Charities: Disbursement Quota Reform**

Budget 2010 proposes to reform the disbursement quota for fiscal years that end on or after March 4, 2010.

#### **3. Employee Stock Options**

Budget 2010 proposes to prevent

both the stock option deduction to the employee and a deduction by the employer from being claimed for the same employment benefit.

Budget 2010 also proposes to repeal the stock option tax deferral election to employees of public corporations.

Budget 2010 also proposes to introduce a special elective tax treatment for taxpayers who elected under the current rules to defer taxation of certain public share stock option benefits until the disposition.

## B. OTHER TAX

### Online Notices

Budget 2010 proposes that the *Income Tax Act*, *Excise Tax Act*, *Excise Act, 2001*, *Air Travellers Security Charge Act*, *Canada Pension Plan* and *Employment Insurance Act* be amended to allow for the electronic issuance of those notices that can currently be sent by ordinary mail if authorized by a taxpayer.

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## ESTATE PLANNING

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### VOLUNTEERS

In a March 11, 2007 External Technical Interpretation, CRA notes that where an individual is a volunteer without remuneration, or at most minimal remuneration, reimbursements of automobile expenses, airline tickets, and payment of allowances for meal expenses to attend meetings of the Board of Directors (including allowances to cover meals for their spouses) are not considered income for tax purposes.

## TURNING AGE 71 IN 2010

Taxpayers turning age 71 in 2010 could consider making one year advance contributions to their RRSP. For example, by making the 2011 contribution in December, 2010 (just before the RRSP is wound-up), this over-contribution may be deducted in January, 2011 if there is sufficient contribution room for 2011. This would be subject to a 1% penalty for the month of December on the excess contributions over \$2,000. However this penalty is minor compared to the large tax deduction in 2011.

Professional advice is recommended.

## TAX-FREE SAVINGS ACCOUNT

On October 16, 2009, Finance News Release 2009-099 provided technical amendments to the TFSA rules including a 100% tax on the income under the "advantage" rules, in addition to the existing 1% per month penalty tax on over-contributions.

## GIFT OF ECOLOGICAL PROPERTY

In an October 9, 2009 Technical Interpretation, CRA notes that when a taxpayer makes a gift of land which is ecological property, in addition to being able to claim a donation tax credit (in the case of an individual) or a deduction for gifts (in the case of a corporation), the capital gain, resulting from the disposition of the land is cancelled.

## STRUCTURED SETTLEMENT

In a 2009 Advance Tax Ruling, CRA Ruled that the payments under an annuity contract to the Plaintiff will not be taxable in the hands of the

recipient as it meets the terms of a structured settlement.

In this case, an individual (Plaintiff) suffered serious permanent injuries at the time of birth. The Plaintiff commenced an action against the Defendant. Pursuant to an out-of-Court settlement, the casualty insurer of the Defendant assigned its rights and obligations to an assignment company who will purchase a single premium annuity contract with a life insurance company to provide periodic payments to be received under a structured settlement arrangement.

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## FARMING

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### FULL DEDUCTION FOR FARMING

In a September 25, 2009 Tax Court of Canada case, the taxpayer worked approximately 40 hours per week as a police officer in Ottawa and at least 40 hours per week on his farm. CRA had restricted the deduction of the \$25,379 2004 farm loss against employment income to \$8,750.

The farm was a family operation and his spouse supervised the farm business when the taxpayer was at work as a police officer. The Court noted that the family has worked extremely hard on the farm operation.

Taxpayer Wins!

The Court had no problem in concluding that the farm losses were fully deductible against the police officer employment income on the basis that the taxpayer's chief source of income was a combination of

farming and his employment as a police officer.

### HORSE RACING OPERATIONS

In a December 17, 2009 Tax Court of Canada case, the Court allowed the taxpayer a full deduction for horse race operation losses.

The taxpayer's position was that the horse operation, in conjunction with his law practice, was his chief source of income.

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### EMPLOYEE VS. INDEPENDENT CONTRACTOR

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In a December 23, 2009 Court of Appeal for Ontario case, the Court found the Agreement between Elizabeth McKee and Reid's Heritage Homes (RHH) was one of employment, not independent contractor.

The Court then noted that it is an implied term in an employment situation that the employee is entitled to reasonable notice of termination.

In this case Mrs. McKee worked exclusively for RHH. She was also under the control of RHH as to where she was to sell, the promotion methods, what she was to sell, and how much it was to sell for. With respect to the "tools", Mrs. McKee performed her sales functions in model homes provided by RHH and RHH supplied her stationery and forms. Also, Mrs. McKee was financially dependent on RHH and had no expectation that she might earn a profit as distinct from the fixed commissions. Also, the sales force of which Mrs. McKee was a member

was a crucial element of RHH's business organization.

### Editor's Comment

It is important to have the terms of the engagement in writing and that the relationship meets the required tests if independent contractor status is to be obtained.

Also, another downside for the payer is that when a recipient is considered to be an employee, the payer may be subject to penalties for failing to withhold and remit source deductions for income tax, CPP, EI and Workers Compensation. The payer may also have liability if the worker was to have received other benefits.

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### GST/HST

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#### PLACE OF SUPPLY RULES

On February 25, 2010, Finance Release 2010-014 introduced new Place of Supply Rules related to where the recipient of a service or an intangible property is located with respect to the GST/HST rules.

For example, Ontario (13%) and British Columbia (12%) are proposing to introduce HST on July 1, 2010.

#### DIRECT SELLING INDUSTRY

On January 13, 2010, CRA introduced GST/HST Info Sheet GI-052 - Direct Selling Industry - The Network Sellers Method for Network Sellers and Sales Representatives. This 8-page Release reflects proposals from the January 27, 2009 Fed-

eral Budget for any fiscal year of a Network Seller that begins on or after January 1, 2010.

### INPUT TAX CREDITS

In a January 28, 2010 Tax Court of Canada case, the issue was whether Comtronic was entitled to Input Tax Credits (ITCs) where the GST Registration Number of the supplier shown on the invoice was not that of the supplier but was a validly issued number belonging to someone else as part of an identity theft operation.

#### Taxpayer Loses

The Court noted that under the Excise Tax Act an ITC cannot be claimed unless the claimant has obtained prescribed information including the name of the supplier and the registration number assigned to the supplier.

### CREDIT CARD EXPENSES AND THE REGISTRANT'S USE OF FACTORS FOR CLAIMING INPUT TAX CREDITS

In an April 28, 2010 CRA Release P-184, CRA discussed the use of the Factor Method, instead of the Exact Calculation Method, to compute the eligible Input Tax Credits (ITCs) in relation to credit card reimbursements for expenses incurred by employees.

### ELECTRONIC FILING

On January 4, 2010, CRA proposed mandatory electronic filing requirements for certain GST/HST Registrants beginning July 1, 2010.

Under the measures, the following groups will be required to file their GST/HST Returns electronically:

- GST/HST Registrants with greater than \$1.5 million in annual taxable supplies (except for charities);
- Registrants required to recapture Input Tax Credits for the provincial portion of the HST on certain inputs in Ontario or British Columbia; and
- builders affected by the transitional housing measures announced by Ontario or British Columbia.