

Tax Tips & Traps – 4th Qtr 2009

YEAR-END TAX PLANNING

Some 2009 year-end tax planning tips include:

1. Certain expenditures made by individuals by December 31, 2009 will be eligible for 2009 tax deductions or credits including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union, professional, or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness amounts.

2. The 2009 Federal Budget proposes to introduce a temporary Home Renovation Tax Credit for expenditures made after January 27, 2009 and before February 1, 2010 in excess of \$1,000, to a maximum of \$10,000, resulting in a maximum Federal credit of \$1,350 (\$9,000 x 15%).

Please provide details of renovation costs (example - carpets, landscaping, additions, fences, painting, etcetera, etcetera).

For details, see www.cra.gc.ca and click on Home Renovation Tax Credit.

3. You have until March 1, 2010 to make tax deductible Registered Retirement Savings Plan (RRSP) contributions for the 2009 year.

Consider contributing to a spousal RRSP to achieve income splitting in the future.

4. If you own a business, consider paying a reasonable salary to family members for services rendered to the business.

5. An individual whose 2009 net income exceeds \$66,335 will lose all, or part, of their old age security.

Senior citizens will begin to lose their income tax age credit if net income exceeds \$32,312.

Contact your professional advisors for assistance in managing 2009 personal income.

6. Consider purchasing assets eligible for capital cost allowance before the year-end.

7. Consider selling capital properties with an underlying capital loss prior to the year-end if you had taxable capital gains in the year, or

any of the preceding three years. This capital loss may be offset against the capital gains.

8. Registered Education Savings Plan (RESP)

A Canada Education Savings Grant (CESG) for RESP contributions will be permitted equal to 20% of annual contributions for children (maximum \$500 per child per year).

9. Health and dental premiums for the self-employed

Individuals will be allowed to deduct amounts payable for Private Health Service Plan coverage in computing business income provided they meet certain criteria.

10. A refund of Employment Insurance paid for non-arm's length employees may be available upon application to CRA.

11. Taxpayers that receive "eligible" dividends from private and public corporations will have a significantly lower tax rate on the dividends. Notification from the corporation to the shareholder is required.

12. Eligible public transit passes will be entitled to a tax credit.

13. A fitness tax credit for children under 16 enrolled in certain organized sports is available.

14. A Registered Disability Savings Plan may be established for a person who is eligible for the Disability Tax Credit. Non-deductible contributions to a lifetime maximum of \$200,000 are permitted which are eligible for grants and bonds. Please contact your professional advisors for details.

2009 REMUNERATION

Some general guidelines to follow in remunerating the owner of a Canadian-controlled private corporation earning "active business income" include:

1. Bonusing down active business earnings in excess of the annual business limit may reduce the overall tax. However, leaving corporate active business income over this amount presents a tax deferral.

Professional advice is needed in this area.

2. Notification must be made to the shareholders when an "eligible" dividend is paid - usually in the form of a letter dated on the date of the dividend declaration. If all shareholders are directors, the notification may be made in the Directors' Minutes.

Please contact your professional advisor for advice before paying an eligible or ineligible dividend.

3. Elect to pay out tax-free "capital dividend account" dividends.

4. Consider paying dividends to obtain a refund of "refundable dividend tax on hand".

5. Corporate earnings in excess of personal requirements could be left in the company to obtain a tax deferral. The effect on the "Qualified Small Business Corporation" status should be reviewed before selling the shares.

6. Dividend income, as opposed to salaries, will reduce an individual's cumulative net investment loss balance thereby providing greater access to the capital gain exemption.

7. Excessive personal income affects receipts subject to clawbacks, such as old age security, the age credit, child tax benefits, GST credits and certain provincial incentives.

8. Salary payments require source deductions to be remitted to the Canada Revenue Agency on a timely basis.

9. Individuals that wish to contribute to the Canada Pension Plan or a Registered Retirement Savings Plan may require a salary to create "earned income".

10. Salaries paid to family members must be reasonable.

PERSONAL TAX RETURNS

MEDICAL EXPENSE – AIR CONDITIONER

In an April 27, 2009 External Technical Interpretation, CRA notes that a taxpayer may claim the cost of installing a central air conditioner as a medical expense providing that certain tests are met.

In particular, the taxpayer needs a prescription from his/her doctor which indicates that he/she needs an air conditioner to help cope with an ailment which is both severe and chronic. Also, the medical expense claim for an air conditioner is limited to the lesser of \$1,000 and 50% of its cost.

EMPLOYMENT INCOME

CRA ADMINISTRATIVE CHANGES

On June 11, 2009, CRA introduced policy changes for employment benefits. For example,

Overtime Meals and Allowances Provided to Employees

For 2009, CRA will consider no taxable benefit to arise if:

- the value of the meal or meal allowances is reasonable; a value of up to \$17 will generally be considered 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. Less than three times a week will generally be considered infrequent or occasional. However, this condition may also be met where the meal or allowance is provided three or more times per week on an occasional basis to meet workload demands such as major repairs or periodic financial reporting.

Loyalty Programs

For 2009, CRA will no longer require loyalty points (e.g., frequent flyer points) that are controlled by the employee to be added as employment income by the employee as long as:

- the points are not converted to cash,
- the plan or arrangement is not indicative of an alternate form of remuneration, or
- the plan or arrangement is not for tax avoidance purposes.

Non-Cash Gifts and Non-Cash Awards

For 2010, the following changes are being made to CRA's gift and award policy. The current rules are that up to two gifts and two awards costing \$500 or less are non-taxable to the employee but deductible to the employer.

- Non-cash gifts and non-cash awards to an arm's length employee, regardless of the number, will not be taxable to the extent that the total aggregate value of all non-cash gifts and awards to that employee is less than or equal to \$500 annually. The

total value in excess of \$500 annually will be taxable.

- In addition to the above, every 5 years a separate non-cash long-service award may also qualify for non-taxable status to the extent its total value is \$500 or less.

ESTATE PLANNING

EXCESS CONTRIBUTION TO RRSP - TAX AND INTEREST

In a June 18, 2009 Tax Court of Canada case, the taxpayer made excessive contributions to an RRSP and was assessed a 1% per month tax plus interest.

The taxpayer's waiver request was refused.

DIRECTOR LIABILITY - UNPAID GST/HST

In a May 4, 2009 Tax Court of Canada case, the taxpayer/director was assessed for personal liability for unpaid GST/HST of \$236,344 plus interest of \$7,372 plus penalties of \$9,651 for a total of \$253,367.

Taxpayer Wins!

The Court noted that where the director has little understanding of financial documents, he may rely on others to handle the financial aspects without incurring personal liability for unpaid GST/HST.

Also, in a May 12, 2009 Technical Interpretation, CRA notes that directors cannot be assessed more than two years after they cease to hold

office.

SUPERFICIAL LOSSES

In a January 22, 2008 Technical Interpretation, CRA notes that a taxpayer's loss from the disposition of property is deemed nil to the extent that it is a "superficial loss".

For example, this applies if the taxpayer sells a security which is then purchased, or repurchased, by a Trust governed by the taxpayer's RRSP, RRIF or TFSA within the period of thirty days before, or thirty days after, the disposition.

FARMING

EASEMENT OR RIGHT OF WAY

In a June 4, 2009 External Technical Interpretation, CRA notes that if the property to which the easement or right of way pertains meets the definition of "qualified farm property" the landowner may be entitled to the capital gains exemption.

GST

INPUT TAX CREDITS (ITCs) – CAUTION

In corporate structures, it is important to ensure that it is the recipient of the supply that pays the expense and claims the ITC. CRA has made reassessments where the wrong person in a corporate group has claimed the ITCs.

