

Tax Tips & Traps – 2nd Qtr 2011

PERSONAL TAX

CRA LETTER INITIATIVE

CRA will be conducting a Letter Campaign in 2011. Two types of letters will be sent to Canadians across the country. Some will receive a letter providing information about the eligibility criteria of certain deductions they have claimed on their recent income tax returns. Others will receive a letter with the same information however, it will also inform them that their income tax returns may be selected for audit.

This is the same as the Letter Campaign that was first commenced in early 2010. In 2010 the Letter Campaign involved sending 37,000 letters to Canadians.

As part of this second year of its Campaign, CRA will send 29,000 letters similar to those sent in 2010. CRA notes that the letter does not mean that the tax returns were incorrect. CRA requests that if the return was not correct that a T1-ADJ be submitted to CRA. CRA notes that the letter recipients were chosen at random. For a series of questions and answers on this, see cra.gc.ca/whtsnw/tms/ltrcmpgn-eng.html.

WORKING INCOME TAX BENEFIT (WITB)

The maximum WITB for 2010 is \$931 for single individuals with no eligible dependents, or \$1,690 for individuals with an eligible spouse or at least one eligible dependent.

The WITB is a refundable tax credit available to eligible working low-income individuals. You could claim the WITB in 2010 if your working income is over \$3,000 and you meet the eligible criteria.

You are eligible for the WITB in 2010 if:

- you are 19 years of age or older on December 31, 2010; and
- you are a resident of Canada.

However, if you are under 19 years of age, you may still claim the WITB if you have a spouse or common-law partner or an eligible dependent on December 31, 2010.

You are not eligible for the WITB if you are enrolled as a full-time student at a designated educational institution for more than 13 weeks in 2010 and you do not have an eligible dependent. To claim the WITB, you complete Schedule 6 of the T1 Personal Tax Return.

Working income is income from employment and business.

Also, eligible individuals have the option to apply for WITB advance payments to a maximum of 50% of the expected claim on your 2011 tax return.

The 2010 adjusted family net income levels if you had neither an eligible spouse nor an eligible dependent is less than \$16,770. If you had an eligible spouse or an eligible dependent, it is less than \$25,854.

If you qualify for the disability supplement and you do not have a spouse or dependent, the net income level is \$19,867. If you had a spouse or an eligible dependent, it is \$28,954. However, if both spouses are disabled the net income level is \$32,054.

For more details see CRA Guide RC4227.

These amounts vary for residents of Alberta, British Columbia, Nunavut and Quebec.

MEDICAL EXPENSE - IN-VITRO FERTILIZATION

In a March 9, 2011 Technical Interpretation, CRA notes that the cost of in-vitro fertilization qualifies as a medical expense, as do the related travel costs, as long as certain criteria are met.

MEDICAL EXPENSE - SLEEP EVALUATION STUDY

In a March 9, 2011 Technical Interpretation, CRA notes that a sleep evaluation study meets the medical expense conditions which includes diagnostic procedures for maintaining health.

EMPLOYMENT INCOME

SOCIAL EVENTS

In an October 8, 2010 Technical Interpretation, CRA notes that where an employer provides free of charge to all employees, a party or other social event, there is no taxable benefit if the cost per employee does not exceed \$100. This limit is per occurrence. More than one event per year may be offered by the employer if it is reasonable in the circumstances.

Where the event is offered to all employees and their spouses, the average cost of \$100 is calculated based on the total number of guests and not only by the number of employees.

The \$100 is an average based on the total amount paid by the employer for the reception or social event, including room rental, food and entertainment expenses. Thus, it is necessary to include the GST/HST paid by the employer in calculating the average cost of the evening.

Additional costs such as transportation home, taxi fare, and overnight accommodation are not included in the \$100 per person. If

the cost is greater than \$100 per person, the entire amount, including the additional costs, is a taxable benefit.

SETTLEMENT - GENERAL DAMAGES

In a March 15, 2011 Technical Interpretation, CRA notes that where general damages are received in respect of personal injuries sustained before or after the loss of employment (for example, in situations of harassment during employment or defamation after dismissal), or where a loss of employment involves a human rights violation, the general damages will be viewed as unrelated to the loss of employment and, therefore, non-taxable.

However, it must be clearly demonstrated that the damages received relate to events or actions separate from the loss of employment. In the case of damages received for a human rights violation, only a reasonable amount, determined by reference to the maximum amount that would be awarded under the particular human rights legislation and the evidence presented in the case, would qualify as non-taxable.

BUSINESS/PROPERTY INCOME

SALARY TO A SPOUSE

In a March 14, 2011 Tax Court of Canada case, the issue was whether CRA was correct in denying the Appellant's deduction for a salary to his spouse against his Proprietorship income in 2005 of \$9,200.

Taxpayer Wins!

The Court noted that:

1. In 2005 the Appellant needed additional help in his Proprietorship and he retained his spouse who has a Bachelor of Science Degree from the University of Windsor in Honours Electrical Engineering/Computer Option.

2. The Appellant stated that his spouse supervised the installation and implementation and debugging of a particular hardware at the customer's site. The project lasted for about four months.

3. The Court concluded that it was more likely than not that the taxpayer did retain services of his spouse in 2005 and that she earned the \$9,200 paid for those services.

OWNER - MANAGER REMUNERATION

DIRECTOR LIABILITY FOR GST/HST

In a February 8, 2011 Tax Court of Canada case, the taxpayer was a director of a corporation which had not remitted its GST. Therefore, he was personally liable, and paid \$57,202 and incurred legal fees of \$3,196 in defending himself.

Taxpayer Loses - Again!

The Court found that the payment for the GST on behalf of the company was not a deductible expense and, the legal expenses were also not deductible. Legal fees paid in relation to an Objection or Appeal

under the Excise Tax Act are not deductible whereas, legal fees to object under the Income Tax Act are deductible.

However, legal fees to contest a GST Assessment may be deductible under ordinary business principles if the taxpayer is carrying on a business. In this case, he was not. Therefore the legal fees with respect to the GST were not deductible in computing business income.

The payment for the director's liability is not deductible because it is not incurred to earn income.

Legal fees with respect to GST may also be deductible as an amount paid in making a representation relating to a business carried on by the taxpayer. However, in this case, the taxpayer was not carrying on a business.

EMPLOYMENT INSURANCE (EI)

In a January 20, 2011 Tax Court of Canada case, CRA took the position that the salary paid to Dion (the son of the shareholders of the corporation) was subject to EI on the basis that his terms and conditions of employment were roughly similar to those that would have occurred if there was an arm's-length relationship.

Taxpayer Wins!

The Court noted that the exception for EI under the Employment Insurance Act was met on the basis that:

1. Dion had much more freedom with regard to working hours than an arm's-length shop

supervisor would have had.

2. He was paid for periods during which he took off and he provided substantial assistance for questions related to the operations of the company.

3. Even if nothing is cast in concrete, Dion and his parents had agreed that in a few years he would purchase the company from his parents when they retired.

4. It would not be reasonable to conclude that the terms of employment were roughly similar to those that would have occurred if there was an arm's-length situation.

5. It was clear that his relationship with the company was very different from what CRA had assumed.

Editor's Comment

It is important on the initial enquiry by CRA that the proper information is provided to CRA so that they may make a proper decision without the taxpayer having to file an Appeal to the Tax Court before receiving an equitable result.

ESTATE PLANNING

FIRST-TIME HOMEBUYERS

First-time homebuyers have a number of incentives including:

1. Non-Refundable Tax Credit
The Income Tax Act provides a non-refundable tax credit based on \$5,000 (at 15% = \$750) for "first-time homebuyers who acquire

a qualifying home" after January 27, 2009.

An individual will be considered a "first-time homebuyer" if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the four preceding calendar years.

The credit is also available for certain acquisitions of a home for the benefit of an individual who is eligible for the disability tax credit.

Any unused portion of the tax credit may be claimed by the individual's spouse or common-law partner. Where more than one individual is entitled to the tax credit (for example, where two individuals jointly buy a home), only one credit is allowed.

2. RRSP Homebuyers' Plan (HBP)

This HBP permits each spouse to withdraw up to \$25,000 from his/her RRSP (\$50,000 per couple) if you or your spouse has not owned an owner-occupied home in the period beginning with the start of the fourth calendar year before the year in which you acquired the new home and ending thirty-one days before the acquisition of the new home. The thirty-one day rule allows a person to acquire the new home up to thirty days before the withdrawal. However, this condition is not applicable if the person is disabled or if you are purchasing a home for a disabled person.

The home must be purchased

by October 1 of the year after the year the amount was withdrawn. You must intend to occupy the home as your principal residence within one year of acquiring it. However, once you live in the home as a principal residence, there is no minimum period of time that you have to live there.

You must repay the loan with a minimum of 1/15th per year for up to fifteen years.

In a June 18, 2010 Technical Interpretation, CRA notes that a mobile home on leased land may be considered a “qualifying property” for purposes of the HBP assuming all other conditions are met.

3. Land Transfer Tax Exemption

Some provinces (for example, Ontario and British Columbia) have a limited exemption for land transfer tax for first-time homebuyers.

Another thing to consider is that a parent or grandparent may make a non-interest bearing loan to a child, for example, to assist the child in acquiring a personal asset such as a residence or a car. This avoids the non-deductible interest expense to the child. As there is no income earned on these personal assets, the attribution rules are not applicable.

If the loan is not repaid at the time of the parent’s death, the Will could forgive that part of the loan. The “debt forgiveness” rules in the Income Tax Act do not apply to a bequest or inheritance.

Also, a gift to an adult child does not trigger the attribution rules.

ROLLOVER TO REGISTERED DISABILITY SAVINGS PLAN (RDSP)

The Income Tax Act provides rules to allow the tax-deferred transfer (rollover) to a RDSP of certain amounts received from a RRSP, RRIF or Registered Pension Plan (RPP) as a consequence of the death of the annuitant or RPP Plan member.

To qualify for this rollover, the beneficiary of the RDSP must be a child or grandchild of the deceased, and have been financially dependent on the deceased by reason of infirmity. A qualifying beneficiary is referred to as an “eligible individual”. Transitional rules also provide access to the rollover in situations where the deaths of the RRSP or RRIF annuitant or RPP member occurred in 2008, 2009 or 2010.

This applies after March 3, 2010. However, “Specified RDSP Payments” cannot be made until after June 2011.

2012 CANADA PENSION PLAN

In a February 20, 2011 Release, Service Canada mentioned that starting in 2012:

- If you are under age 65 and you work in Canada while receiving your CPP retirement pension, you and your employer will have to make CPP contributions.

- Between the ages of 65 and

70, you can either chose to make contributions or opt out. If you chose to make contributions, your employer will also have to contribute.

- These contributions will increase your CPP retirement benefit through the post-retirement benefit.

If you are an employee or self-employed person who has contributed to the CPP and are thinking about retirement:

- Starting in January, 2011, your monthly CPP retirement pension will increase by a larger percentage if taken after age 65.

- If you start receiving your monthly CPP retirement pension in January 2012 or later:

- your monthly benefit amount will decrease by a larger percentage if taken before age 65;

- you can take your CPP retirement pension without any work interruption; and

- a longer period of low or zero earnings may be automatically dropped from the calculation of your pension.

TAX FREE SAVINGS ACCOUNTS (TFSA)

In a January 11, 2011 CRA Newswire Release, CRA notes that if a person contributed to a TFSA \$5,000 in 2009 and only \$2,000 in 2010, then you could contribute \$8,000 in 2011. This includes the \$3,000 unused contribution room from 2010 plus \$5,000 for 2011.

In another example, CRA notes that

if you contributed \$5,000 in both 2009 and 2010 and then withdrew \$10,000 in November 2010, your contribution room for 2011 would be \$15,000. This is calculated using your annual dollar limit of \$5,000 for 2011 plus the \$10,000 withdrawal made in 2010. Withdrawals are not added back to your contribution room until after the end of the year.

Caution!

CRA also notes that if you have more than one TFSA, you can transfer funds directly from one of your TFSAs to another of your TFSAs without affecting your contribution room. The direct transfer must be completed by your financial institutions.

However, if you withdraw funds on your own from one TFSA and contribute those same funds to another TFSA, the re-contribution will be considered to be a new contribution. As a result, your TFSA contribution room will be affected and you may be subject to a tax on excess contributions.

If your contributions in a year exceed your TFSA contribution room, you will be subject to the TFSA tax on excess contributions of 1% per month on your highest excess TFSA amount in each month. This tax will accumulate until the excess amount is withdrawn.

FLOW-THROUGH SHARES

An investor who acquires flow-through shares of a corporation, usually involved in mining or oil exploration, may be entitled to receive up to a 100% deduction for

the exploration costs through a flow-through from the corporation. If, for example, the entire cost of the investment is passed on through tax deductions, the adjusted cost base of the investment would be nil.

If the shares are publicly traded securities, a donation to a charity will result in a charitable donation credit equal to the fair market value of the donation and, the resulting capital gain will be considered to be nil.

CHARITABLE DONATION SCHEMES

In a March 3, 2011 Federal Court of Appeal case, the Federal Court confirmed the Tax Court decision that the taxpayer was not entitled to claim any charitable tax credit for money which had been “donated” to the National Foundation for Christian Leadership (NFCL).

Under this Program, nearly all students who solicited the “donations” received bursaries for the expenses related to their education at Christian post-secondary institutions equal to approximately 80% of the lesser of the students’ expenses and the funds that they had solicited.

The Federal Court found the Appellants had received a benefit from their “donations” to NFCL because the student-recipients benefited from the bursaries.

The Court noted that a gift must be a gratuitous transfer of property for which no benefit flows to the donor.

FARMING

CASH PURCHASE TICKETS

In an October 22, 2010 Technical Interpretation, CRA discusses the tax implications for farmers who receive “cash purchase tickets” in respect of the delivery of grain to a primary or a process elevator.

The general rule is that the “cash basis” farmer is required to include in income the value of a cash purchase ticket that is received in satisfaction of an income debt in the taxation year in which it is received.

However, the Income Tax Act provides an exception to the general rule where:

- the cash purchase ticket issued by the primary or process elevator is for the sale of grain (wheat, oats, barley, rye, flaxseed and rapeseed), produced in designated areas; and
- the holder of the cash purchase ticket is entitled to payment by the elevator operator of the amount stated therein, without interest, at a date that is after the end of the taxation year in which the grain is delivered.

Under these conditions, the farmer includes the amount in the immediately following taxation year.

CRA also notes that this deferred grain ticket is not considered to be “inventory”. Accordingly, neither the optional inventory adjustment nor the mandatory inventory adjustment rules apply to a cash basis farmer

holding a deferred cash purchase ticket issued to that farmer at the end of a taxation year.

RELATIONSHIP BREAKDOWN

COMMON-LAW BREAKDOWNS

In February, 2011, the Supreme Court of Canada ruled in two cases from Ontario and British Columbia that in a breakdown of a common-law relationship, each of the persons should be entitled to fair compensation from the other person for making sacrifices such as giving up a career in support of a partner when entering into a common-law relationship.

The Court noted that where both persons were together for the common good with each making extensive, but different, contributions to the welfare of the other and as a result having accumulated assets, the money remedy for unjust enrichment should reflect that reality.

The money remedy should treat the claimant as a co-venturer, not as the hired help.

The Ontario case was related to an Ottawa couple, who had two children and lived together for twelve years before separating.

The Supreme Court found that Ms. Vanasse should get \$1 million in compensation as her portion of the wealth for the period when she gave up her job, moved to Halifax and stayed at home to take care of their two children. Mr. Seguin's business was eventually sold for \$11 million.

The Court also awarded Ms. Vanasse legal costs for the lengthy battle.

The Court emphasized that a Partner who has contributed substantially to a business, property or another success of the other's career, should benefit commensurate with that contribution.

This decision pertains only to common-law couples as asset divisions in marital separations are governed by a strict formula.

The British Columbia case involved a couple who lived together for twenty-five years. Both persons worked for most of the time and contributed to their common good in a variety of ways. Ms. Kerr successfully claimed a share of property that was in Mr. Baranow's name claiming that he would be "unjustly enriched" if he was permitted to keep most of the share of the asset.

RETROACTIVE SPOUSAL SUPPORT

In a March 18, 2011 Technical Interpretation, CRA notes that the \$18,750 lump-sum payment paid to the wife is not deductible nor should it be included in the income of the wife on the basis that the \$18,750 is not for amounts that were payable on a periodic basis.

GST/HST

GST/HST PLACE OF SUPPLY RULES

Clients often ask which sales tax, GST or HST, will apply in a particular situation. To answer them, we look to the GST/HST "place of supply" rules. While these rules can get very complex, the best place to start is to look at the most basic rules for sales of goods and/or services.

For the sale of tangible personal property ("TPP"), the general rule is that a supply takes place in the province to which the vendor delivers the TPP, or where the vendor makes the TPP available to the purchaser.

If the vendor ships the TPP to a province on a common carrier that it has arranged itself, the destination province is the place of supply. But if the vendor ships the TPP to a province on a common carrier that the purchaser has arranged, the province where possession of the TPP is given to the common carrier is the place of supply.

Also, if a vendor sends the TPP via mail or courier to an address in a province, it is that province that is the place of supply.

This is why we often say that both GST and HST are "destination-based" taxes, and why it is important to determine that destination.

For a supply of a service, the general rule is that a supply takes place in the province noted in the customer's address. In many ways, it will not matter where the service provider is located - the place of supply will be the province in the purchaser's address.

Complexities arise if you have more than one address for a customer (such as a head office address as well as a branch office address), or if the service is performed in more than one province.

Keep in mind that the GST/HST place of supply rules are not integrated with provincial sales tax rules. It is possible that both GST/HST and PST can apply to some services!

Remember...these are the most basic “general” rules for sales of goods and supplies of services. There are many scenarios that will fall outside the general rules. For a detailed discussion of these, look to CRA’s Technical Information Bulletin B-103, *“Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province”*.

WEB TIPS

GOOGLE INSTANT

As letters and terms are added and deleted in the Google Instant search box, search results immediately appear and change. This tool offers the benefit of immediate feedback as to whether the selected search terms are giving you the intended types of results in addition to simply speeding up the whole search process.

You may be required to update your browser to the most current version to use this tool.

For more information, go to:
<http://www.google.com/instant/>

GOOGLE DESKTOP

Google Desktop offers desktop

search capability for all items stored on your hard drive and supplemental ports. This tool offers similar types of results as the more basic Windows Desktop Search, however, speed of response is almost instantaneous (similar to the normal Internet Google search tool). For more information, visit:
<http://desktop.google.com/>

DID YOU KNOW

UNCLAIMED OAS, GIS

In a February 9, 2011 Federal Tax Force Financial Literacy Report, the Tax Force noted that about 160,000 eligible seniors did not apply to receive Old Age Security, representing almost \$1 billion in benefits. Another 150,000 eligible seniors did not apply to receive the Guaranteed Income Supplement.