

Tax Tips & Traps – 3rd Qtr 2010

PERSONAL TAX

CAREGIVER CREDIT

The Income Tax Act (ITA) provides a caregiver federal tax credit of up to \$633 for 2010 (\$4,223 x 15%) plus a provincial tax credit for individuals residing with and providing in-home care to a parent or grandparent (including in-laws) 65 or over or an infirm dependent relative. The federal credit is reduced by 15 cents for each dollar of the dependant's net income over \$14,422 in 2010.

MEDICAL EXPENSE - WEIGHT LOSS PROGRAM

In a Technical Interpretation, CRA notes that fees charged for a weight loss program qualify as medical expenses if the services are diagnostic, therapeutic, or rehabilitative and are provided by medical practitioners.

A “**medical practitioner**” is a person who is authorized by a province or other jurisdiction to act as a “medical practitioner”.

MEDICAL EXPENSES - COSMETIC PROCEDURES

The 2010 Federal Budget notes that purely cosmetic procedures are no longer eligible to be claimed as medical expense tax credits. 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.

MEDICAL EXPENSES - TRAVEL - AEROPLAN FREQUENT FLYER POINTS

In a Tax Court of Canada case, the taxpayer “purchased” an airline ticket from Thunder Bay to Chicago to obtain medical treatment by redeeming Frequent Flyer Points. In addition, the Appellant paid taxes of \$220 on the ticket.

The value of the Frequent Flyer Points plus the \$220 was allowed as a medical expense.

UNIVERSITY OUTSIDE CANADA

The ITA also provides a tuition credit where the individual is a student in full-time attendance at a university outside Canada in a course leading to a degree.

CHILD CARE EXPENSE (CCE) - PAYMENT TO YOUR SISTER

In a Technical Interpretation, CRA notes that where a taxpayer pays his sister (age 18 or over) to take care of his child while he is working, the amounts paid will likely be CCEs on the basis that they are only prohibited with respect to payments to the child's father or mother, a supporting person of the child, or a person who is under eighteen years of age and related to the taxpayer, or a person in respect of whom the taxpayer or supporting person has deducted a tax credit.

EMPLOYMENT INCOME

EMPLOYEE BIRTHDAY GIFTS

In a Technical Interpretation, CRA notes that gifts to employees from employers of up to \$500 are tax-free as long as they have not been given to non-arm's length employees and are not performance-related awards (e.g. sales targets) or cash and near-cash awards.

Birthday gifts of up to \$500 would qualify for the non-taxable amount.

If the value of the gift is over \$500 then the excess would be taxable.

SPORT FACILITY PAID BY THE EMPLOYER

In a Technical Interpretation, CRA notes that a benefit related to the payment or reimbursement of sports facility dues by an employer, must be included in the employee's income if the employee, not the employer, is the primary beneficiary.

Editor's Comment

Membership in a facility, which is mainly for client promotion, may be considered as primarily to the advantage of the employer and may not be a taxable benefit.

HOME PURCHASE LOAN

An employee may borrow funds from an employer to acquire a home, or to repay a loan or debt (refinance) that was received to acquire a home. There will be no taxable benefit as long as the interest charged by the employer is equal to the prescribed interest rate at the time the loan is taken out by the employee (currently 1% until at least September 30, 2010).

PRIVATE HEALTH SERVICES PLAN (PHSP)

In a Technical Interpretation, CRA notes that an employer may deduct its contributions to a PHSP and the benefits received by employees will not be included in income.

A PHSP is a contract of insurance for expenses that would normally qualify

as medical expenses. A Cost-Plus Plan can be considered a PHSP if it contains the basic elements mentioned above.

BUSINESS/PROPERTY INCOME

EMPLOYMENT INSURANCE BENEFITS FOR SELF-EMPLOYED PEOPLE

Self-employed persons will be able to enter into an **agreement** with **Service Canada** to access four types of special **Employment Insurance (EI)** benefits:

- **maternity** benefits;
- **parental** benefits;
- **sickness** benefits; and
- **compassionate** care benefits.

To enter into an agreement with Service Canada, you may register online using My Service Canada Account. If you enter into an agreement after April 1, 2010, you will have to wait twelve months before you will be able to make a claim for EI special benefits.

Self-employed persons also include persons that own more than 40% of the voting shares of a corporation and are, therefore, otherwise, exempt from participating in the Employment Insurance Program.

Self-employed persons just pay the employee portion of EI premiums.

OWNER-MANAGER REMUNERATION

EMPLOYEE PROFIT SHARING

PLAN (EPSP)

In an Employment Insurance (EI)/Canada Pension Plan (CPP) case, the Court found that payments made through an EPSP for the owner-manager were not subject to EI or CPP.

PERSONAL LIABILITY

In a CRA Release, CRA warned that businesses are required to hold source deductions and GST/HST amounts in trust for the Government.

CRA can collect these unremitted amounts through garnishments, assessment of the directors, seizure and sale of assets, and any other means of recovery allowed under Federal Legislation.

CRA notes that taxpayers that have not complied may make a Voluntary Disclosure and will not be penalized or prosecuted if they make valid disclosures before they become aware of any CRA compliance action against them. Taxpayers may only have to pay the taxes owing, plus interest.

DIRECTOR LIABILITY - DE FACTO DIRECTOR

In Tax Court of Canada case, CRA assessed the taxpayer for the corporation's unpaid GST of \$14,455 because she was listed as a director in the records of the company.

The taxpayer noted that she was never elected as a director and this

was all a mistake. However, CRA said that, in any event, she was still a de facto director because she was acting as a director.

Taxpayer Wins!

The Court found that the taxpayer was not elected as a director of the corporation and did not act as a de facto director.

DIRECTOR LIABILITY - DUE CARE AND DILIGENCE

In a Tax Court of Canada case, Antonio, the father of Tony, was assessed personal liability for unpaid source deductions, interest and penalties of over \$651,000 and unpaid GST of over \$191,000.

Taxpayer Wins!

The Court noted that Tony, the son, was the one who controlled the company and intimidated his father Antonio with respect to the directorship role. The Court concluded that Antonio, with his limited commercial experience, reasonably trusted, and relied on, his son. Therefore, Antonio was held not to be liable on the basis that he exercised the required due care and diligence.

DIRECTOR LIABILITY

In an Ontario Superior Court of Justice case, Mr. Adams took action for indemnity against various Defendants for \$217,243 he was required to pay to CRA as a director for unpaid GST and source deductions on behalf of the corporation.

Mr. Adams alleged that the Defendants were officers and directors of the corporation and that they failed to ensure the corporation made the proper remittances to CRA.

Mr. Adams Loses

The Court found that the Defendants were not directors at the time the debts arose and, even if they had been, the Court noted that they exercised due diligence under the Act and would not be liable in any event.

ESTATE PLANNING

NON-PROFIT ORGANIZATION (NPO) - FILING REQUIREMENTS

In a Technical Interpretation, CRA notes that NPOs may be corporations with share capital, corporations without share capital, or unincorporated entities. The filing requirements for these associations are similar to taxable organizations.

TRANSFER OF CAPITAL LOSSES BETWEEN SPOUSES

In a Technical Interpretation, CRA confirmed that it still accepts the transfer of latent capital losses between spouses.

HOME BUYERS PLAN (HBP)

In a Technical Interpretation, CRA notes that up to \$25,000 may be withdrawn from an individual's RRSP to buy or build a qualifying house (first-time buyer - a four-year test).

CRA also notes that if an individual

buys a qualifying house with his/her spouse, they can each withdraw up to \$25,000 from their RRSPs for a combined amount of up to \$50,000.

Under the HBP, the individual has to repay all withdrawals to his/her RRSP within fifteen years.

RRSP/RESP/RRIF - QUALIFIED INVESTMENTS

In a Technical Interpretation, CRA notes that shares of small business corporations may be qualified investments provided that certain conditions are met including, immediately after the acquisition of the share, each person who is an annuitant, a beneficiary or a subscriber is not a connected shareholder (a 10% test).

CHARITIES CONNECTION

Charities Connection is a new CRA electronic publication that gives charities timely information on technical issues, new guidance and policy changes, Charities Directorate initiatives, and reminders.

For example, Charities Connection No. 2 provides information to charities on the payroll process, determining the employment status of charity workers, what is included in employees' income, withholdings, remittances, and reporting.

For more information Google "charities connection".

FAMILY TRUSTS

Recently CRA have been auditing

Family Trusts.

A Family Trust may be used to provide control of the assets to the Trustees rather than the beneficiaries, reduce probate fees by getting the assets out of the Estate, preventing the assets from being part of the public record in a death, and providing income splitting with family members. However, Family Trusts must be properly established and operated, hence the CRA audits.

TAX-FREE SAVINGS ACCOUNTS (TFSA) - OVER-CONTRIBUTIONS

Taxpayers must be careful not to inadvertently subject themselves to TFSA penalties. For example, if a taxpayer put \$5,000 into Bank 1 in January, 2009 and withdrew that amount and then put \$5,000 into Bank 2 in February, 2009, the penalty is 1% per month (\$50 per month or \$600) because the taxpayer had excess contributions of \$5,000 for the twelve months. This is because the withdrawal does not get credited until the following year. If it is considered deliberate, there is an additional penalty of 100% of any income or gains resulting from the deliberate over-contribution.

CRA TFSA PENALTY RELIEF

CRA announced that they will consider waiving the tax on excess TFSA contributions if the taxpayer genuinely misunderstood the operation of the rules.

CRA sent out over 70,000 letters to

persons who have technically had over-contributions in 2009.

If a taxpayer receives a Notice of Assessment, they may object or request a waiver of the taxes on excess contributions under Taxpayer Relief.

GST/HST

CREDIT CARD EXPENSES REIMBURSED

CRA introduced a Guide which notes that where expenses are reimbursed by an employer, the employer may claim an Input Tax Credit (ITC) for the GST/HST. CRA allows a Registrant who is an employer, partnership, charity or public institution to use factors to calculate ITCs in respect of the GST/HST deemed paid by the Registrant on purchases made by the Registrant's employees, partnership members, or volunteers where credit cards have been used to make purchases.

The use of factors is to simplify the administrative burden Registrants have because credit card receipts are often a one-sum total and include gratuities, PST, etc. This is an administrative policy of the CRA and is not legislated. The choice of the factor method is an option for a Registrant. Some Registrants may prefer to use the exact calculation method.

INPUT TAX CREDITS (ITCs)

In a Tax Court of Canada case, the taxpayer filed a GST Return on August 28, 2007 and claimed Input Tax Credits of \$8,129 which were related

to expenses that were incurred prior to January 1, 2003.

CRA successfully disallowed the ITCs on the basis that they were not claimed within the four-year time limit.

INTERNATIONAL

MOVING TO THE UNITED STATES

Canadians that become non-residents (including moving to the United States) are deemed to dispose of certain assets such as marketable securities, private company investments, or real property. (Departure Tax)

This deemed disposition can create double tax when an individual moves to the U.S. and then disposes of such assets in an actual transaction, because the cost basis of the assets under the U.S. rules is based on the original, historical cost.

However, an election related to the deemed disposition reduces the incidence of double taxation.

WITHHOLDING TAX

In a Technical Interpretation, CRA notes that the requirement to withhold or deduct tax applies to payments for services rendered, or to be rendered, in Canada by a non-resident person. The Regulation includes payments to a non-resident person of a fee, commission or other amount in respect of services rendered in Canada, of any nature what-

ever.

TRANSFER PRICING

CRA is auditing and assessing more cross-border transactions between related parties. Caution is needed in this area.

U.S. CITIZENS AND RESIDENTS

There is a significant compliance burden to U.S. citizens and residents if they own Canadian (or other non-U.S.) mutual funds.

DID YOU KNOW

CORPORATION FILINGS

Corporations with gross revenues over \$1 million must file their Federal Income Tax Return electronically for all taxation years ending after 2009 - unless they are specifically exempt. However, the penalty only applies for taxation years ending after 2010.

NATURAL PERSON - LOSES

AGAIN

In a Federal Court case the Plaintiff's claim that he was not subject to income tax because he was a "natural person" was dismissed. The Court noted that this argument has been analyzed and dismissed in many other Canadian court cases.

The Plaintiff's efforts to use the Court to advance this untenable theory were "forlorn and doomed" from the outset.