Tax Tips & Traps

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PERSONAL TAX

COMMON-LAW PARTNER

In an April 11, 2011 Technical Interpretation, CRA notes that a "common-law partner" means a person who cohabits in a conjugal relationship with the taxpayer and, either has cohabited with the taxpayer for a continuous period of at least one year, or is considered to be a "parent" of a child of whom the taxpayer is also a parent.

This is relevant for income tax and other purposes.

MEDICAL EXPENSE TAX CREDIT (METC) - COSMETIC PROCEDURES

In an April 4, 2011 Technical Interpretation, CRA notes that eligible medical expenses exclude amounts paid for purely cosmetic purposes, unless necessary for medical or reconstructive purposes.

CRA opined that expenditures such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening would generally not qualify for the METC.

A cosmetic procedure will qualify for the METC if it is required for medical or reconstructive purposes such as expenditures that would ameliorate a deformity arising from a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

CRA notes that a general statement on a receipt indicating that the procedure was "not purely for cosmetic procedures" would not, by itself, be determinative. It may be necessary to provide additional information to determine that a cosmetic procedure qualifies for the METC such as a description of the nature and purpose of the procedure.

MOVING EXPENSES - NEW SALES TERRITORY

In a May 12, 2011 Technical Interpretation, CRA reviewed a situation where the employee's sales territory was expanded such that the individual's most southerly point in her sales territory was now over a two hour drive from her home.

CRA concluded that the expansion of the sales territory was significant enough to conclude that it resulted in a new work location for purposes of the moving expense deduction. Even though there was a two year gap between the time the individual began servicing her new expanded territories and her move, there was a sufficient nexus between the move and the commencement of employment at the new work location to qualify as an eligible relocation. Therefore, the moving expenses would be deductible.

BUSINESS/PROPERTY INCOME

ACQUISITION OF AUTOMOBILE

In a 2011 Technical Interpretation, CRA commented on the tax implications of purchasing an automobile which is made available to an employee.

They noted that the taxable standby charge to the employee is based on 2% of the original cost of the automobile per month or, in the case of a leased automobile, two-thirds of the lease cost, excluding insurance, minus amounts paid by the employee to the employer for the use of the automobile.

A reduced standby charge is available if the vehicle is used primarily for business purposes (a 50% test) and the employee's personal use does not exceed 20,004 kilometres per year.

CRA noted that the original cost of the vehicle is the purchase price including options, accessories, GST/HST and PST, but does not include, obviously, the trade-in. Additions made to the automobile after it is purchased which are capitalized are also included (including the GST/HST and the PST). Also included are the tire and battery levies.

SIMPLIFIED LOG BOOK

CRA recently announced the introduction of a new simplified log book for motor vehicle expense provisions. Self-employed individuals can now choose to maintain a full log book for one complete year to establish the business use of a vehicle in a base year. After one complete year of keeping the log book to establish a base year, a three-month sample log book can be used to establish business use for the entire year, providing the usage is within the same range (within 10%) of the results of the base year.

MOTOR VEHICLE EXPENSES

In an April 4, 2011 Technical Interpretation, CRA notes that employees may deduct motor vehicle travel expenses if required to carry out his/her employment duties away from the employer's regular place of business and the employee is required by the contract of employment to pay such expenses. A completed Form T2200 is also required.

EMPLOYMENT INCOME

EMPLOYMENT VS. INDEPENDENT CONTRACTOR STATUS

In an April 20, 2011 Tax Court of Canada case, the Court concluded that this bicycle courier was an employee, not an independent contractor, but noted that this is a very fine line.

The Court compared this case to a previous case which had found the courier to be an independent contractor because:

1. The courier could sign on and off at will.
2. The courier was responsible for the loss of deliveries.
3. The courier could negotiate a better pay rate.
4. The courier could employ others.
5. The pay was based on volume.
6. The courier admitted that he entered into something other than an employment arrangement.

The Court noted that the facts require little tweaking to shift the balance. It remains a grey area of the law between independent contractor and employee.

WEB TIPS

PREZI.COM – ONLINE PRESENTATION SOFTWARE

When looking to improve visua l presentations and simply make them sparkle, consider using Prezi.

The traditional method for creating a presentation consists of making a series of slides. With Prezi, only one very large slide is used. Information and pictures are posted onto it in whichever area the user wants (similar to putting yellow sticky notes on a whiteboard). The user than determines the order in which they would like the information to appear. When showing the presentation, the visual focus simply slides from one posted piece to the next based on the creators preference.

OWNER - MANAGER REMUNERATION

SALARY PAID TO FAMILY MEMBERS - EMPLOYMENT INSURANCE (EI)

In an April 20, 2011 Tax Court of Canada case, the taxpayer was the son of the owner of the corporation and received a salary from that corporation. The Court found that the salary was not subject to EI on the basis that the employment conditions were different than that which would have been provided to an arm's length employee.

The Court noted that it is difficult for individuals who work for family members to have insurable employment because the personal relationship almost inevitably manifests itself in some way in the employment relationship.

Also, in an April 6, 2011 Tax Court of Canada case, the Court determined that the salary paid by a corporation to the owner's spouse was not subject to EI on the basis that it was not reasonable to conclude that the payer and the Appellant would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

PERSONAL LIABILITY FOR UNPAID GST/HST

In an April 18, 2011 Tax Court of Canada case, the taxpayer was a director of a corporation that did not remit its GST because the spouse of the shareholder/director was responsible for remitting GST and, due to her ill health, she was unable to make the remittance.

The Court noted that the director did not exercise the degree of care, diligence and skill to prevent the failure to remit the GST that a reasonably prudent person would have exercised in comparable circumstances and, therefore, was personally liable for the unpaid GST.

However, the Court did recommend that the taxpayer discuss the possibility of the waiver of the penalties and interest with the CRA under the Taxpayer Relief Provisions on the basis that the spouse's illness caused the unremittance of the GST.

GST / HST

SOME GST/HST POINTS TO CONSIDER

Even though GST has been around for 20 years, there are still a few areas that CRA always seems to assess upon audit as mistakes and oversights often occur in these areas.

Supporting Documentation for ITCs

There are rules that require certain pieces of information be obtained (usually from the invoice) before you can claim an Input Tax Credit (an "ITC") for the GST/HST that you pay.

Meals & Entertainment

Where meal and entertainment expenses are subject to a 50% limitation for income tax, the GST/HST is also limited to 50%.

Reimbursement of Employee Expenses

Don't forget that when you reimburse an employee for business expenses, you may be eligible to claim an ITC for the GST/HST that was paid by the employee.

Professional advice may be needed in these GST/HST areas.

CHARITIES

CRA Guide GI-067 provides basic GST/HST guidelines for charities including special charity GST/HST rules, registration details, and small supplier rules.

CRA Guide GI-066 provides information on how a charity calculates the net GST/HST tax.

ESTATE PLANNING

EXCESS RRSP CONTRIBUTIONS

In a February 23, 2011 Tax Court of Canada case, the taxpayer was successfully assessed by CRA tax and penalties of $1,040 and $177 for the 2004 taxation year and $1,099 and $187 for the 2005 taxation year for excess RRSP contributions.

TAXPAYER RELIEF

In a May 30, 2011 CRA Newswire Release, the Honourable Gail Shea, the new Minister of National Revenue, noted that taxpayers that cannot meet their tax obligations due to a natural disaster (such as spring flooding in Quebec, Manitoba, Saskatchewan and Alberta and forest fires in the Slave Lake area) may apply for penalty and/or interest relief by completing Form RC4288.

For details, Google "Tax Relief Measures Available to Victims of Natural Disasters in Canada".

OLD AGE SECURITY PENSION (OAS)

The OAS is available to Canadians aged 65 or over who have lived in Canada for at least ten years after age 18. If a Canadian is living outside Canada, the

OAS may still be available if they were residents of Canada for at least 20 years after age 18.

Seniors must apply to receive the OAS. This could be done 6 months before turning age 65 to allow Service Canada time to process the application for payment on the month that the person turns age 65.

OLD AGE SECURITY (OAS) - CLAWBACK

The maximum monthly OAS benefit is $533.70 for the third quarter of 2011. The 2011 clawback of OAS benefits starts at 15% of net income over $67,668 and is completely eliminated at income of $110,038.

In addition, there will be a repayment of "clawed back" OAS for the next year based on 1/12 of the total estimated repayment on the previous year commencing in July of the next year. If the next year's income is going to be significantly less, a waiver for this clawback could be requested.

This repayment is called a Recovery Tax. The Recovery Tax is indicated in Box 22 of the T4-OAS and this can be claimed as a tax payment on the return for that year.

FEDERAL BUDGET

On June 6, 2011 a new Federal Budget for the 2011 fiscal period was presented.

On March 22, 2011 the original edition of the Budget was presented. However, on March 26, 2011 Parliament was dissolved and, therefore, the Budget was not adopted.

Most items included in the March 22, 2011 Federal Budget were kept fully intact.

The Government's fiscal positions include deficits in the years
2010/2011 ($40.5 billion),
2011/2012 ($29.6 billion),
2012/2013 ($19.4 billion),
2013/2014 ($9.5 billion),
2014/2015 ($0.3 billion),
and a surplus in 2015/2016 ($4.2 billion).

The Federal Government notes that it will:

1. provide $80 million in new funding over three years to help small and medium-sized businesses accelerate their adoption of key information and communications technologies,
2. provide nearly $870 million over two years to address climate change and air quality, including the extension of the ecoENERGY Retrofit-Homes program,
3. introduce a 15-per-cent Children's Arts Tax Credit, provided on up to $500 of eligible expenditures,
4. provide a temporary Hiring Credit for Small Business of up to $1,000 against a small firm's increase in its 2011 Employment Insurance (EI) premiums to encourage hiring,
5. limit deferral opportunities for corporations with investments in partnerships,
6. enhance the Guaranteed Income Supplement (GIS) via a top-up benefit of up to $600 annually for single seniors and $840 for couples,

There were no new corporate or individual tax rates introduced.

DID YOU KNOW?

NEW FILING REQUIREMENTS

On September 17, 2010, CRA announced that, effective for fiscal periods ending after December 31, 2010, a Canadian Partnership, or a Partnership that carries on a business in Canada, must file a T5013 Partnership Information Return where one of the following conditions are met:

- At the end of the fiscal period the revenues plus expenses are greater than $2 million or, the Partnership has more than $5 million in assets.

- At any time during the fiscal period the Partnership was either a tiered Partnership, had a Partner that was a corporation or a Trust, invested in flow-through shares of a principal business corporation that incurred Canadian resource expenses and renounced these expenses to the Partnership or had received a written request from CRA to file a T5013 Information Return.

HIGH-NET-WORTH INDIVIDUALS

In February, 2011 CRA introduced a new audit program called the "related party initiative" (RPI) which identifies high-net-worth individuals and their related economic entities for CRA risk assessment reviews.

Individuals with net asset value of over $50 million, and related groups comprising of 30 or more entities, were the target of this project.

CRA is asking for the completion within 30 days of a 20-page questionnaire asking for information about related economic entities, Corporations, Trusts, Joint Ventures, and Private Foundations. Information requested includes copies of the Minutes of Corporate Board of Directors Meetings, correspondence, legal and accounting firms files used, and tax-planning documents.

U.S. SOCIAL SECURITY BENEFITS

Changes made to the Canada-U.S. Tax Convention beginning in 1996 increased the inclusion rate for U.S. Social Security benefits to 85% from 50%. The 2010 Federal Budget reinstated the 50% inclusion rate for Canadian residents who have been in receipt of U.S. Social Security benefits since January 1, 1996 and for their spouses and common-law partners who are eligible to receive survivor benefits. These changes apply to benefits received on or after January 1, 2010.

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