

TAX TIPS & TRAPS

3RD QUARTER - 2009

PERSONAL TAX

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 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.

MEDICAL EXPENSES - OUT-OF-COUNTRY

In a May 19, 2009 External Technical Interpretation, CRA notes that the cost of stem cell therapy which is not available in Canada will qualify as a medical expense. This includes payments to medical practitioners and hospitals and the transportation and travel expenses for the patient. Also, where an individual has been certified as being incapable of traveling alone, costs for an accompanying individual are included.

CRA did note that certain requirements must be met such as substantially equivalent medical services not being available in the individual's locality.

CRA also notes that even where medical services are available nearer to the individual's locality, if it is reasonable to travel to the place where the medical services were obtained, the reasonability requirement may be met.

MEDICAL EXPENSE - TUITION FEES

In an April 7, 2009 Tax Court of Canada case, the taxpayer claimed tuition

fees paid to Foothills Academy of \$10,499 and \$21,525 as a medical expense.

The Court noted that the taxpayer must provide a certificate of an appropriately qualified person (example, a doctor) certifying that:

- (i) the person has a mental or physical handicap; and
- (ii) the person requires equipment, facilities or personnel specially provided by that school for care, or care and training.

Taxpayer Wins - Partially

The Court disallowed the medical expense due to an inadequate certificate. CRA did say that if a proper certificate was provided they would reconsider the claim.

However, a portion could still be claimed (estimated to be 20%) as remuneration for tutoring services, that are supplementary to the primary education of the patient who has a learning disability or mental impairment as certified in writing by a medical practitioner.

EMPLOYMENT INCOME

CRA ADMINISTRATIVE CHANGES

On June 11, 2009, CRA introduced administrative policy changes for taxable employment benefits. This is a brief summary of some of the changes.

Overtime Meals and Allowances Provided to Employees

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

- the value of the meal or meal allowance 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.

If overtime occurs on a frequent basis or becomes the norm, CRA considers the overtime meal allowances to be taxable since they start taking on the characteristic of additional remuneration.

Municipality or Metropolitan Area

Commencing in 2009, CRA will accept that allowances paid for travel within a municipality or metropolitan area may be excluded from income if the allowance is paid primarily for the benefit of the employer. An allowance may be excluded from income when its principal objective is to ensure that the employee's duties are undertaken in a more efficient manner during the course of a work shift, and where allowances paid are not indicative of an alternative form of remuneration.

Loyalty Programs

Commencing in 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.

Where an employer controls the points (e.g., a company credit card), the employer will continue to be required to report the fair market value of any benefits received by the employee on the employee's T4 Slips when the points are redeemed.

Non-Cash Gifts and Non-Cash Awards

The current rules are that up to two gifts and two awards costing \$500 or less respectively are non-taxable to the employee and deductible to the employer.

Commencing in 2010, the following changes are being made to CRA's gift and award policy:

- 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, a separate non-cash long-service/anniversary award may also qualify for non-taxable status to the extent its total value is \$500 or less. The value in excess of \$500 will be taxable. To qualify, the anniversary award cannot be for less than five years of services or for five years since the last long-service award had been provided to the employee. For the purpose of applying the \$500 thresholds, the annual gifts and awards threshold and the long-service/anniversary awards threshold are separate. In other words, a short fall in value under one policy cannot be used to offset an excess value of the other.
- The employer gift and award policy will not apply to non-arm's length employees (e.g., relative of the proprietor, shareholders of closely held corporations) or related persons of the non-arm's length employee.
- For clarification purposes, items

of an immaterial or nominal value, such as coffee, tea, T-shirts with employer logos, mugs, plaques, trophies, etc. will not be considered a taxable benefit to employees. Also, performance-related awards (e.g., sales targets) or cash and near-cash awards (e.g., gift certificates) will continue to fall outside the administrative policy and will be required to be included in the taxable income of the employee.

See www.cra.gc.ca/tx/bsnss/tpcs/pyrll/bnfts/gfts/menu-eng.html for more information.

BUSINESS/PROPERTY INCOME

RESTRUCTURING OF BORROWINGS

In a March 31, 2009 External Technical Interpretation, CRA was asked to review a situation where the taxpayer has a mortgage on a personal property (interest expense is non-deductible) and proposes to sell investments (such as shares and bonds), use the proceeds to repay the personal mortgage, and then secure a joint line of credit with the personal property as security in order to acquire investment assets to earn income.

CRA notes that a taxpayer may restructure borrowings and the ownership of assets so that the interest is deductible for tax purposes.

Caution: Professional assistance is needed in this area.

DEDUCTIBLE LIFE INSURANCE PREMIUMS

Premiums payable by a taxpayer under a life insurance policy used as collateral for a loan may be deductible in computing income from a business or property where certain conditions are met including:

- the life insurance policy is assigned to a financial institution in the course of borrowing for business or property purposes;
- the assignment of the life insur-

ance policy is required by the financial institution as collateral for the borrowing; and

- the interest payable in respect of the borrowing is otherwise deductible in computing the taxpayer's income for the year.

OWNER-MANAGER REMUNERATION

INDIVIDUAL PENSION PLANS (IPPs)

General Information

An Individual Pension Plan (IPP) is a defined benefit pension allowed under tax legislation. Once established, it eliminates most of the individual's RRSP deduction limit. Therefore, an IPP could be considered as a replacement retirement savings vehicle for an RRSP.

Comparison with RRSP

RRSPs work well for younger employees. Tax-free compound interest growth on RRSP contributions over their long pre-retirement asset accumulation period can provide an adequate pension. However, an RRSP does not work as well for employees close to retirement. For example, a \$21,000 RRSP contribution for a 60-year old employee does not buy much pension as the shorter pre-retirement period does not allow sufficient time for the magic of compound interest to work. At the older ages, an employee would require a defined benefit type of pension plan such as an IPP to provide contributions that are in excess of the RRSP deduction limit.

IPP Contributions

IPP contributions are deductible by the employer against corporate income.

For 2009, an IPP member would require approximately \$122,000 of employment income to maximize IPP contributions. Sample 2009 IPP contribution amounts for the different ages include: approximately \$23,000 for age 40; \$28,000 for age 50; \$33,000 for age 60 and \$36,000 for age 65.

IPP contributions are based on both income and age, and increase with age.

An IPP also allows the employer to make past service contributions on behalf of the member.

Ideal IPP Candidates & Time for Implementation

The ideal IPP candidates are shareholder employees or senior executives of profitable companies as well as incorporated professionals who are close to retirement.

The best time to implement an IPP is probably when the employer is having a hugely profitable year and is looking for tax deductions. The significant IPP past service contribution amount would be a good way to reduce corporate income to under the small business limit.

IPP Terminal Funding

IPPs are subject to many funding restrictions through actuarial assumptions. However, catch-up contributions can be done after pension commencement. This can be quite significant and can be tied in nicely with the shareholder's exit from the business.

ESTATE PLANNING

EXPENSES INCURRED BY VOLUNTEERS ON BEHALF OF A REGISTERED CHARITY

In an April 28, 2009 CRA Release, CRA notes that where a volunteer has a right to reimbursement from the registered charity for expenses incurred, the charity may treat a reimbursement waiver from the volunteer as a gift in kind and issue a receipt for income tax purposes.

A written direction from the volunteer should be obtained confirming the right to reimbursement and direct the registered charity to issue a receipt rather than provide reimbursement - for example, "I ___ direct that the funds to which I am entitled by way of reimbursement for ___, and would otherwise be forwarded to me by cash or cheque, be transferred to ___ as my gift."

The charity should also have a policy in place on reimbursing volunteers.

The charity should report the amount of the gift on the Registered Charity Information Return (Form T3010).

HOME RENOVATION TAX CREDIT

Under proposed changes a taxpayer can claim a non-refundable tax credit on the 2009 personal income tax return based on eligible expenditures incurred for work performed or goods acquired after January 27, 2009, and before February 1, 2010, in respect of an eligible dwelling.

The HRTC applies to eligible expenditures of more than \$1,000, but not more than \$10,000, resulting in a maximum credit of \$1,350 [(\$10,000 - \$1,000) x 15%].

The CRA site at www.cra.gc.ca/hrtc notes that generally any dwelling that you own and is used personally by you or your family can qualify, including your home or cottage.

The CRA site also includes this example. William and his spouse Marie pay \$5,000 to purchase an energy efficient furnace for their home and \$3,500 to build a deck at their cottage. They also decide to have the area around the deck landscaped for \$2,500, bringing their total cost to \$11,000 (\$5,000 + \$3,500 + \$2,500). Marie claims an HRTC of \$1,350 (\$10,000 - \$1,000 @ 15%).

Also, William and Marie may be eligible for the eco ENERGY Retrofit-Homes Grant. For more information about the eco ENERGY program see www.ecoaction.gc.ca.

Examples of eligible costs include renovating a kitchen, bathroom, or basement; new carpet or hardwood floors; building an addition, garage, deck, garden/storage shed, or fence; re-shingling a roof; a new furnace, wood stove, boiler, fireplace, water softener, or water heater; a new driveway or resurfacing a driveway; interior or exterior painting; window coverings directly attached to the window frame and whose removal would alter the

nature of the dwelling; laying new sod; permanent swimming pools; fixtures (lights, fans); associated costs such as permits, professional services, equipment rentals and incidental expenses.

Expenses that will not qualify include furniture, appliances, audio and visual electronics, tools, carpet or housecleaning, maintenance contracts, and financing contracts.

Also, CRA notes in a May 19, 2009 External Technical Interpretation, that any window covering, including blinds, shutters and shades, that is directly attached to the window frame and whose removal would alter the nature of the dwelling will qualify for the HRTC. However, draperies or curtains would generally not be considered to be fixtures and will not qualify for the HRTC.

Also, CRA notes that the larger, heavier type of hot tub that needs to be hardwired directly to the homeowner's electrical panel would qualify for the HRTC. However, the "plug-and-play" type that comes with the cord connected and ready to use, without the need of a permanent electrical installation, would not qualify as it is not enduring in nature and integral to the eligible dwelling.

GST/HST

GST/HST NEW HOUSING REBATES

In April, 2009, CRA released 27-page Guide RC4028, GST/HST New Housing Rebate, which provides information if you built or bought a new or substantially renovated house (including a condominium unit and a mobile home), if you built a major addition to your existing house or if you converted a non-residential property into your house. The Guide explains the New Housing Rebate including Forms GST190 and 191.

INVESTMENT MANAGEMENT FEES

In an April 16, 2009 Federal Court of Appeal case, the Court found that the fees paid to certain investment managers were exempt from GST because

they are financial services.

Editor's Comment

The investor who has paid GST on investment manager fees could consider making a GST rebate claim under the Excise Tax Act for the two preceding years, assuming that the Government does not retroactively change the law. This should be discussed with your investment manager.

SALE OF REAL PROPERTY

Under the Excise Tax Act, sales of real property in Canada are generally subject to GST/HST unless the supply is eligible for a specific exemption such as where the sale is made by an individual, unless it was used primarily in a business carried on by the individual

with a reasonable expectation of profit.

INPUT TAX CREDITS (ITCs) - CAUTION

In a 200-9 Federal Court of Appeal case, Telus acquired business assets from EdTel and filed a joint election under the Excise Tax Act such that the purchase resulted in no GST. However, some of the business assets acquired had not yet been paid for by EdTel and, therefore, the Agreement stated that Telus would pay the unpaid liabilities plus the GST owing of \$1.8 million.

CRA successfully disallowed the \$1.8 million of GST ITC's on the basis that Telus was not the recipient of the supplies for GST purposes.

Editor's Comment

Also, in corporate structures, it is important to ensure that it is only the recipient of the supply that may claim the ITC. CRA has made reassessments where the wrong person in a corporate group has claimed the ITCs.

HOME CONSTRUCTION INDUSTRY

In a 41-page CRA Release (RC4052), CRA discusses the GST/HST information for the Home Construction Industry including who remits the tax, filing the return, claiming Input Tax Credits, substantial renovations, sales of real property, grants and subsidies, and special situations.

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