

TAX, TIPS & TRAPS

FOURTH QUARTER

Table of Contents

Tax Tidbits.....	1
CEBA Repayment Deadline Extended: Some Issues.....	1
Enhanced GST Residential Rental Rebate: Increased Incentives.....	2
Enhanced First-Year CCA: Phase-Out After December 31, 2023.....	2
Surcharge To Accept Payment Via Credit Card: GST/HST?.....	3
Businesses Purchasing from Non-Residents: GST/HST?.....	3
Mandatory Disclosure Rules: Increased CRA Disclosures.....	3
Revival of a Corporation: Tax Collection	4
Employment Insurance: Misconduct.....	4

This publication is a high-level summary of the most recent tax developments applicable to business owners, investors and high net worth individuals. Enjoy!

Tax Tidbits

Some quick points to consider...

- **CRA** has produced various basic **tax education and literacy tools**, such as seven learning modules with videos and quizzes.
- As of **January 1, 2024**, where **more than five information returns** of a particular type (such as T4s, T5s, T3s, T4As, NR4s and T5018s) are filed on **paper** (as opposed to electronically) for a particular filer, a **penalty of \$125/form** will apply. Businesses filing five or fewer forms can still do so on paper without penalty.
- **Renovations** to create a safe play and therapy area for a **child with a mental impairment** could be eligible for the **home accessibility tax credit**.

CEBA Repayment Deadline Extended: Some Issues

On September 14, 2023, the Department of Finance provided **details** on extending the **deadline** for **Canada Emergency Business Account (CEBA)** repayments, including the following key elements:

- the **deadline** to qualify for **partial loan forgiveness** (by paying the non-forgivable portion) has been **extended** from December 31, 2023 to **January 18, 2024**;
- if a **refinancing application** is made with the **financial institution** that provided the CEBA loan by January 18, 2024, the **deadline** to qualify for **partial loan forgiveness** will be extended to **March 28, 2024**;
- as of January 19, 2024, **outstanding loans** will convert to three-year term loans subject to a **5% annual interest rate** regardless of whether refinancing is sought; and
- the previous **final repayment deadline** of December 31, 2025 has been extended to **December 31, 2026**.

Financial institutions will contact CEBA loan holders directly regarding their loans. The above changes also apply to CEBA-equivalent lending through the Regional Relief and Recovery Fund.

ACTION: Ensure you fully understand the deadlines to avoid missing the partial loan forgiveness.

Enhanced GST Residential Rental Rebate: Increased Incentives

On September 14, 2023, the Department of Finance provided details on a **proposal to enhance the existing GST rental rebate**. In general, the existing rebate provides a 36% rebate of the GST component of the price paid by landlords to construct, or purchase newly constructed, rental property. The existing rebate begins to be phased out for properties valued at over \$350,000 and is eliminated at \$450,000.

The proposal would **increase the rebate from 36% to 100%** and **remove the phase-out thresholds** for properties with a value over \$350,000. The proposal would apply to certain **rental housing projects that begin construction between September 14, 2023 and December 31, 2030, inclusive, and complete construction by December 31, 2035.**

To **qualify** for the **enhanced rebate**, **new residential units** would need to meet the requirements for the existing rental rebate and be **in buildings** meeting the following criteria:

- the property must contain at least **four private apartment units** (units must have a private kitchen, bathroom and living area) **or at least 10 private rooms or suites** (examples of residences for students, seniors and people with disabilities were provided); and
- at least **90% of the residential units** in the building must be designated for **long-term rental**.

Projects that **convert existing non-residential real estate**, such as an office building, **into a residential complex** would also be **eligible** if all other conditions are met. **Public service bodies** would also be **eligible** to access the enhanced rebate.

The **enhanced rebate will not apply** to other properties, such as **individually owned condominium units, single-unit housing, duplexes, triplexes or housing co-ops**; however, the existing rebate would still be available. **Substantial renovations of existing residential complexes would not be eligible.**

On September 21, 2023, the Bill to enact these measures was introduced in the House of Commons. This Bill did **not include all the criteria** for eligible projects but provided that the remaining specifics would be set by regulation in the future.

ACTION: If involved in developing multi-unit residential rental property, consider whether you are eligible for this enhanced GST rental rebate.

Enhanced First-Year CCA: Phase-Out After December 31, 2023

Over the past several years, several **incentives** permitting **enhanced CCA claims** in the **year property first becomes available for use** have been implemented. Claiming the enhanced first-year CCA provides a **tax deferral** by accelerating the deduction. The **phase-out** of these incentives will **begin** for assets that become available for use **after December 31, 2023.**

Immediate expensing property (IEP)

Many capital assets, other than those with particularly long lives (such as buildings), are eligible IEP. This includes assets used in a business such as vehicles and equipment. **CCPCs** that acquire IEP that becomes **available for use by December 31, 2023**, can claim up to 100% CCA on the IEP. The **same** end date applies to property acquired by **eligible Canadian partnerships** that had at least **one member** that was **not an individual**. **No claim** is available under this provision after this date.

For **individuals** and **other eligible Canadian partnerships** (where all members are eligible individuals), the property must be made available for use **by December 31, 2024.**

Accelerated investment incentive property (AIIP) – general

Most capital assets are eligible AIIP. AIIP property that is not manufacturing and processing (M&P) or clean energy equipment is eligible for **triple** the usual **CCA** claim available in the **year of acquisition**. For property that becomes **available for use after December 31, 2023**, this will decline to **twice** the usual CCA available in the first year. For property made available for use after December 31, 2027, no enhancement will be available.

Zero-emission property and manufacturing and processing (M&P) or clean energy equipment
The **100% CCA** deduction applicable to **zero-emission vehicles, zero-emission automotive equipment** and AIIP that is either **M&P or clean energy equipment** is only available for property that becomes **available for use by December 31, 2023**. Property that becomes available for use **by December 31, 2025** will be subject to a maximum **75% first-year CCA deduction**. Property that becomes available for use in the **following two years** will be subject to a **55% maximum**.

ACTION: Many assets acquired and made available for use by December 31, 2023 will be eligible for an enhanced first-year CCA claim. When the asset is made available for use after this date, enhanced CCA may still be available but at a much lower rate.

Surcharge To Accept Payment Via Credit Card: GST/HST?

As of October 2022, merchants could charge an additional fee for accepting payment via credit card. In a March 28, 2023 Technical Interpretation, CRA opined that the additional **fee** would be a separate exempt supply of a financial service and, therefore, **not subject to GST/HST** if all of the following **conditions** are met:

- the fee is **charged** to the cardholder **solely** for the acceptance of the **use of the credit card** as a payment method and is not charged if another payment method is used;
- the fee is **imposed by** (and is thus the revenue of) the **merchant** who provides to the cardholder the property or service that is purchased with the use of the credit card and not by a person who acts as a billing agent or payment service provider in facilitating the payment;
- the fee is **subject to** the relevant **credit card network rules** relating to surcharging, including rules regarding the calculation and level of the surcharge; and
- the fee is **shown and charged separately** to the cardholder.

ACTION: If charging an additional fee to accept credit cards, ensure you satisfy the above conditions to ensure the fee is not subject to GST/HST.

Businesses Purchasing from Non-Residents: GST/HST?

Certain **non-resident vendors** are required to **register** for and **collect GST/HST** under a new **simplified GST/HST registration regime** that commenced July 1, 2021. While the rules are very complex under the simplified regime, GST/HST is not required to be collected on the supply of goods or services to customers **registered for GST/HST**. To avoid being charged GST/HST, the **customer** must **provide** their GST/HST **registration number** to the non-resident vendor. Where GST/HST is **paid in error** to a non-resident vendor registered under the **simplified regime**, the amount is **not recoverable** by claiming an **input tax credit** or filing a claim for tax paid in error.

One challenge business customers face is determining **whether a non-resident vendor is registered under this simplified regime**.

In the summer of 2023, CRA announced that **non-residents registered** under the **simplified method** would have their **GST/HST** accounts automatically **transitioned** from an RT0001 identifier to **RT9999**. This new identifier should be noted on all receipts. When a **GST/HST registrant** purchases from a **vendor** with **this identifier**, the purchaser should **provide** the vendor with its **GST/HST number** to **prevent being charged GST/HST**.

ACTION: If a GST/HST registrant purchases from a non-resident vendor with a GST/HST number ending in RT9999, the purchaser should provide their GST/HST registration number to avoid paying GST/HST.

Mandatory Disclosure Rules: Increased CRA Disclosures

The requirement for **taxpayers** and their advisors to **disclose reportable transactions** to CRA has been **expanded** for transactions entered into after **June 21, 2023**. This change is part of a **broader suite** of changes requiring the disclosure of tax strategies considered **aggressive** by the government. **Similar requirements** exist in **other countries**, including the United States, the United Kingdom, the European Union and Australia.

Transactions that must be reported

A transaction or series of transactions must be reported if it is an **avoidance transaction** and if **one hallmark of aggressive tax planning** (contingent fee, contractual protection or confidential protection) is **present**. Where there are **no hallmarks**, the transaction is **not reportable**, even if there is a tax benefit.

Avoidance transaction

An avoidance transaction is one where it can be reasonably considered that **obtaining a tax benefit** was **one of the main purposes**. This could capture many normal transactions as tax (either alone or with other motivators) is often a main factor.

Contingent fee arrangements hallmark

This hallmark is present if an **advisor or promoter** (or non-arm's length person to them) has or had **entitlement** immediately or in the future and either absolutely or contingently, to a fee based on, or **contingent on, a tax benefit**.

Contractual protection hallmark

This hallmark is present if the **taxpayer**, another person who entered into the transaction for the benefit of the taxpayer, an **advisor** or a **promoter** or a non-arm's length person to any of these persons has or had **contractual protection** in respect of the transaction or series.

Contractual protection means **any form of insurance** (other than standard professional liability insurance) or **other protection**. For example, this could include an indemnity, compensation or a guarantee. The insurance or protection must **protect against a failure** to achieve the **tax benefit** or provide **support** in the course of a **dispute** related to the tax benefit.

Confidential protection hallmark

This hallmark is present if an **advisor or promoter** (or non-arm's length person to them) obtains or obtained confidential protection **in respect of a tax treatment** related to the **avoidance transaction** or series from a person they sold the plan to or provided assistance or advice to.

Confidential protection prohibits disclosing the **details or structure** of the transaction or series to **any person** (including CRA). Disclaiming or **restricting an advisor's liability** is **not confidential protection** if it does **not prohibit** the **disclosure** of the details or structure of the transaction or series.

CRA opined that the **protection of trade secrets** that do not relate to tax does **not constitute** the presence of the **confidential protection** hallmark.

Deadline

The deadline for reporting is **90 days after** the earlier of the **transaction** or becoming **contractually obligated** to undertake the transaction.

Penalties

Penalties of **\$500 per week**, up to the greater of 25% of the tax benefit and \$25,000, apply to most **taxpayers**. For corporations with at least \$50 million of assets, the penalty is \$2,000 per week up to the greater of 25% of the tax benefit and \$100,000.

ACTION: Expanded disclosures to CRA are required when a taxpayer enters into an avoidance transaction and at least one of three hallmarks of aggressive tax planning are present. Ensure you are fully aware of this disclosure requirement and filing if necessary.

Revival of a Corporation: Tax Collection

A June 12, 2023 **Court of King's Bench of Alberta** case reviewed **CRA's application to revive a corporation dissolved in 2020**. The former sole shareholder opposed the application. The corporation's capital losses (as quantified during an audit of the 2013 and 2014 years) were used in 2017 and 2018. CRA sought to revive the corporation and **issue notices of assessment for 2017 and 2018**.

Revival granted

Under the Alberta Business Corporations Act, a **creditor** has standing to **ask** that a **dissolved corporation** be **revived**. While taxpayers remain liable for tax when income is earned, the **liability** does **not** become a **debt until taxes are assessed**. As no notice of assessment had been issued, CRA had no standing as a creditor. They would only become a creditor if they issued a notice of assessment. This created a circularity issue as an assessment could not be issued to a dissolved corporation. However, the Court has the power to **designate** someone as an **"interested person,"** allowing the designated person to **revive a dissolved corporation**.

The Court found that CRA had a **valid interest** in the **revival** and sought this remedy to further its interest; that is, to **issue a notice of assessment to convert** the taxpayer's **liability for taxes into a debt**.

While the **revived corporation** would have no assets, no property, no directors and no shareholders, a dissolved corporation that has been revived is **deemed to always have existed**. CRA argued that they could pursue the **former shareholders** on the basis that **assets were transferred on dissolution to non-arm's length parties for less than fair market value consideration**.

Similar rules are applicable in other provinces.

ACTION: Dissolving a corporation may not protect former shareholders from CRA taking measures to collect a tax debt.

Employment Insurance: Misconduct

An August 24, 2023 **Federal Court of Canada** case reviewed **whether** the taxpayer's employment had ceased due to **misconduct**, which would render the taxpayer **ineligible for employment insurance**. The taxpayer worked at a community health care centre that required **all employees** to provide **proof of full vaccination against COVID-19 unless** they provided evidence of a **valid medical reason** or they had a valid **human**

ACTION: An employee's cessation of employment due to their failure to comply with the employer's vaccination policy may result in that individual being ineligible for employment insurance.

rights reason (including religion) in accordance with the Ontario Human Rights Code for **not being vaccinated**. The Social Security Tribunal found that the taxpayer **lost his employment** due to his own **misconduct** because he was aware of his employer's **vaccination policy** and the consequences of not complying. The Court found that this decision was **not unreasonable**.

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