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PERSONAL TAX STRATEGIES FOR SPRING 2008

PERSONAL TAX

82(1) MEDICAL EXPENSES - RENOVATIONS In a November 9, 2007 *External Technical Interpretation*, CRA notes that the Income Tax Act includes as a ***medical expense, renovations or alterations*** to a dwelling of an individual who lacks normal physical development or has a severe and prolonged mobility impairment.

This must be to enable the individual to ***gain access to***, or to be ***mobile or functional within***, the dwelling, provided that the alteration would not typically be expected to ***increase the value*** of the dwelling and would ***not*** normally be ***incurred*** by a person who has ***normal physical development*** or does not have a mobility impairment.

For example, CRA notes that ***power flush toilets*** could ***qualify*** as a medical expense for a taxpayer who has severe ***crohn's disease*** and incontinence.

Other examples include bathroom aids to access a bathtub, shower or toilet.

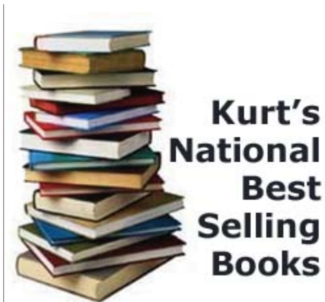
MEDICAL EXPENSES - TRAVEL AND LODGING In a November 14, 2007 *External Technical Interpretation*, CRA notes that reasonable ***travel expenses*** for medical purposes (including transportation, food and lodging) may qualify as medical expenses. Also, transportation and travel expenses for an ***accompanying individual*** may qualify if the patient has been ***certified*** by a medical practitioner as being ***incapable of travelling alone***.

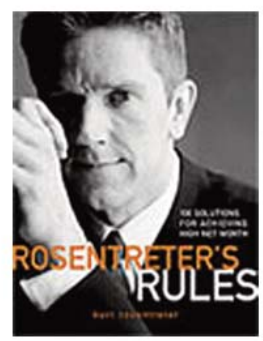
In this CRA Interpretation, the ***patient and spouse*** travelled 400 kilometres for a ***heart transplant*** and rented a ***studio condo*** near the hospital for ***three months***. The ***hospital*** provided a ***letter*** stating that it was necessary for the patient to stay close to the hospital to facilitate post-operative testing, monitoring and physiotherapy.

COMMON-LAW PARTNERS In a January 24, 2008 *Tax Court* of Canada case, the taxpayer was successfully reassessed by CRA for ***recovery*** of the Goods and Services Tax Credit ***(GSTC)*** and the Canada Child Tax Benefit ***(CCTB)*** on the basis that the taxpayer was in a ***common-law relationship*** and the income of her ***common-law partner*** should have been ***taken into account***. As well, amounts claimed for ***child care expenses*** and for a ***wholly dependent person*** were disallowed.

The Court noted that a ***common-law partner*** includes a person who ***co-habits*** in a ***conjugal relationship*** with the taxpayer and has so co-habited for a continuous period of at least ***one year***, or is the ***parent of a child*** of whom the taxpayer is the parent.

The ***issue*** was whether the taxpayers were living in a "***conjugal relationship***". The Court noted that there must be some sort of ***stable relationship*** which involves a ***commitment*** between the parties. It would normally necessitate living under the same roof and shared household duties and responsibilities as well as financial support.





TAXPAYER LOSSES The taxpayer ***failed to establish*** that she was ***not*** living in a ***conjugal relationship*** with Mr. C. They have ***four children*** together, they have been living in the ***same household*** under the same arrangement for ***twenty years***, they continue to have ***sexual relations*** with each other and no one else, they have three properties together as ***joint tenants***, each participates in ***household*** chores, and they each bear some of the ***financial responsibility*** for the household.

EDUCATIONAL INSTITUTIONS OUTSIDE CANADA
In February, 2008 CRA released three Guides including:
RC190 - Information for Educational Institutions Outside Canada with respect to completing the ***TL11A*** for the student's tuition, education, and textbook credits.

RC191 - Provides information on deducting a ***donation*** to a prescribed ***university outside Canada***.

RC192 - Provides information for ***students*** attending educational institutions ***outside Canada*** including eligible ***moving expenses, tuition, education and textbook*** credits, and use of a ***Lifelong Learning Plan*** and a ***Registered Education Savings Plan***.

You may ***obtain*** these ***Guides*** by doing an Internet "***Google***" search - ***RC190, RC191*** and ***RC192***.

EMPLOYMENT INCOME

82(2) CAPITAL GAINS TO EMPLOYEES

In a January 16, 2008 ***Tax Court*** of Canada case, the 21 Appellants were ***employees*** of Canfish Services Inc. ***(CSI)*** which was established in 1996. The ***CSI*** shares were ***sold*** in 2000 for ***$16.5 million***.

The 21 Appellants took the position, and the Court agreed, that 5% of the shares were ***held in Trust*** for these employees. 5% of the proceeds of sale were then ***allocated*** to the ***21 employees*** who reported these as ***capital gains***, eligible for the ***capital gain exemption***. This was agreed to and supported by the ***majority owner*** of the company. Therefore, ***$825,000*** of capital gains were distributed amongst the 21 Appellants on a non-taxable basis.

UNIFORMS AND CLOTHING ALLOWANCE
In a February 25, 2008 ***External Technical Interpretation***, CRA notes that where an ***employer*** requires an ***employee***, in the course of employment, to ***wear a shirt*** that bears the ***employer's logo***, the provision of such a shirt is ***not*** a ***taxable benefit*** to the employee.

BUSINESS/PROPERTY INCOME

82(3) SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In a February, 2008 13-page ***Guide T4052*** (an Introduction to the SR&ED Program), CRA discusses ***what is eligible, investment tax credits and services available*** to claimants such as the first time claimant service, pre-claim project service review, and account executive service.

You may ***obtain*** this ***Guide*** by doing an Internet "***Google***" search - "***T4052***".

ON-LINE POKER EARNINGS/LOSSES
In a January 23, 2008 ***External Technical Interpretation***, CRA notes that whether a person's ***gambling activities*** are taxable as a ***business*** is a question of fact. This includes, the degree of ***organization***, the existence of ***special knowledge*** or ***inside information*** that reduces the element of chance, the taxpayer's ***intention*** to gamble for pleasure as compared to gaining a livelihood, and the ***extent*** of the taxpayer's gambling activities, including the ***number and frequency*** of bets.

Based on the ***limited facts*** in this Technical Interpretation, CRA noted that the ***gambling activities*** appear to be ***primarily for pleasure*** as a ***hobby*** and without special knowledge and would not constitute taxable earnings or losses of a ***business***.

OWNER-MANAGER REMUNERATION

82(4) DIRECTOR LIABILITY

In a December 6, 2007 ***Tax Court*** of Canada case, a company was incorporated on February 23, 1999 to provide masonry services. It was agreed that ***Mr. P*** would do the actual bricklaying and would ***not be involved*** in the ***management*** of the business nor had he ever been involved in management duties in any capacity in any other companies. ***Mr. D*** would deal with the administrative matters.

CRA assessed ***Mr. P,*** as a company ***director***, for 1999, 2000 and 2002 unpaid ***GST and source deductions*** plus ***penalties*** and ***interest***.

Good News for Mr. P! The Court found that:
1. ***Mr. P*** was ***not*** in fact a ***director*** because the Ontario Business Corporation Act (OBCA) requires ***some form of acknowledgement*** by an individual accepting an appointment as a ***director***. Even though there was an attempt to appoint ***Mr. P*** as a director by ***Mr. D***, this did ***not legally occur***.

2. ***Even if Mr. P*** was a ***director***, he would ***not be liable*** as he exercised ***due diligence***.

From the outset he was ***never involved*** in the daily management and administration of the company. He was limited to actual bricklaying and signing cheques that Mr. D delivered to the worksite. There was ***no reason*** for him to ***suspect*** that these cheques were not reaching CRA. Once he did become aware of the problems, he took ***immediate and appropriate steps*** to deal with these problems.

Bad News for Mr. P
In a ***subsequent year*** unpaid GST and source deduction assessments were successfully made against ***Mr. P*** because he was ***late in objecting*** to the assessments.

DIRECTOR LIABILITY - FOR NON-"DIRECTORS"
In a February 13, 2008 ***Federal Court of Appeal*** case, Mr. H, a ***chartered accountant***, was held ***personally liable for unremitted source deductions*** of $47,434 by a ***Toronto Soccer Club*** on the basis that he ***acted as a director*** in 1998 and, he did not satisfy the ***due diligence defence***.

The Court noted that a person, even if they are ***not formally appointed*** as a ***director***, can have ***liability*** if that person has, in fact, ***functioned as a director*** of the entity. The Court concluded that Mr. H had played a ***significant role*** in the affairs of ***the Soccer Club***.

With respect to the ***due diligence defence***, the Court found that Mr. H ***was aware*** that ***the Soccer Club*** had failed to remit the correct amount of source deductions and he did nothing to prevent those failures.

2008 FEDERAL BUDGET 82(5) On ***February 26, 2008*** the Honourable ***Jim Flaherty***, Minister of Finance, presented his third Budget to the House of Commons.

The main ***personal income tax measure*** was the ***Tax-Free Savings Account (TFSA)***.

Starting in ***2009***, any individual (other than a trust) who is resident in Canada and 18 years of age or older will be eligible to establish a ***TFSA*** of up to ***$5,000 per year***.

For example, if an individual contributes $2,000 to a TFSA in 2009, the individual's contribution room for 2010 will be $8,000 ($5,000 for 2010 plus $3,000 carried forward from 2009). There will be no limit on the number of years that unused contribution room can be carried forward.

While ***contributions*** to a TFSA ***will not be deductible***, income, losses and gains in respect of investments held within a TFSA, as well as amounts withdrawn, will not be included in computing income. Some planning considerations include:
1. ***Seniors*** who do not have to spend all of their pension income will be able to earn tax-free income in a ***TFSA*** on ***$5,000 per year***. As seniors are ***income-sensitive*** with respect to erosions of age credit, ***clawbacks*** of Old Age Security, and ***erosions*** of many provincial plans, being able to reduce investment income is advantageous.

2. ***Middle aged, middle income*** households that have $5,000, in excess of what is needed for their spending requirements, will receive non-taxable income on the TFSA.

3. Persons that do ***not*** have ***earned income*** and, therefore, cannot make RRSP contributions should consider depositing surplus funds to the TFSA to earn non-taxable investment income. Subsequently, if they have earned income, they can withdraw the TFSA funds and make their RRSP contribution. TFSA withdrawals will be added to the TFSA contribution room for the following year.

4. ***Low income taxpayers*** may wish to make a contribution to a TFSA, as opposed to an RRSP, if the RRSP deduction is not particularly useful. Each case must be determined on its facts as some low income people are ***income sensitive*** with respect to the GST credit and the Canada Child Tax Benefit.

5. Because all ***income earned*** in a TFSA can be withdrawn ***tax-free***, there is no advantage to having dividend-bearing securities or capital gains in the TFSA as their ***tax advantageous nature*** is ***lost*** as compared to a normal interest account. For example, a ***strip bond***, where normally the gains are accrued each year, will not be taxed in a TFSA.

6. It is important to note that ***interest on money borrowed*** to put into a TFSA is ***not deductible***. This precludes any advantage of borrowing money to put the funds into a TFSA. Also, it is important to check the fees charged by the financial institution before opening a TFSA.

ESTATE PLANNING 82(6)

REGISTERED EDUCATION SAVINGS PLAN (RESP)
Starting in 2007, there is ***no annual limit*** for contributions to RESPs other than the ***lifetime limit*** of ***$50,000*** per beneficiary.

Also, the Government pays a basic Canada Education Savings Grant ***(CESG)*** of 20% of annual contributions to a maximum CESG of $500 per year in respect of each beneficiary ($1,000 in CESG if there is unused grant room from a previous year), and a ***lifetime limit*** of ***$7,200***.

Therefore, if a person wishes to get the full ***$7,200 CESG***, it is important to leave ***contribution room*** of ***$2,500 per year***. For example, making a $50,000 contribution when the child is born would effectively ***eliminate $6,700*** of the ***CESG***. The advantage is that the ***interest on*** the $50,000 would be ***tax sheltered*** and then transferred to the child. It is important to weigh this advantage against the disadvantage of losing the CESG by making all the contributions in one year.

The Government will also pay an ***additional CESG amount*** for each qualifying beneficiary whose f***amily net income*** is less than ***$74,357***.

For more details, see CRA Form ***RC4092*** which may be found through an Internet "Google" search.

PHASED RETIREMENT The 2007 Federal Budget includes changes to Pension rules to encourage "***phased retirement***".

To ***qualify*** for ***phased retirement benefits***, employees must be:
(i) at least ***60 years of age***; or
(ii) at least ***55 years of age*** and eligible for a pension that is not reduced because of their age, pensionable service, or a combination of both their age and pensionable service.

Phased retirement benefits are ***not permitted*** under a Designated Plan, or to an employee who was at any time ***connected*** with the participating employer.

Employers will be allowed to offer qualifying employees ***up to 60%*** of their accrued ***defined benefit pension*** while they continue to accrue ***additional benefits*** under the Plan.

There is no requirement that the partial pension be based on reduction in work time, or that there be a corresponding reduction in salary. As a result, qualifying employees will be able to receive up to 60% of their accrued pension benefits while ***continuing to work***, ***part-time*** or ***full-time***, as well as continuing to accrue benefits for that work.

Also, an employer is under ***no obligation*** to provide phased retirement. The provisions are totally discretionary on the employer. Also, the "phased retirement" is not applicable for Defined Contribution Plans.

WHEN YOU RETIRE In a November, 2008 - 18-page ***CRA Guide, P119*** (available through a search on the CRA website ***www.cra.gc.ca***), CRA discusses tax aspects related to Old Age Security, Canada Pension Plan, retiring allowances, annuity payments, pensions, RRSPs, RRIFs, pension income splitting, investment income, capital gains and losses, etc.

It also discusses the payment of tax by ***installments*** and the reducing and deferring of tax through ***carrying charges*** and various ***tax credits***. It also discusses the implications upon ***leaving Canada***.

PROGRAMS AND BENEFITS FOR THOSE WITH DISABILITIES Looking for ***programs*** for those with ***Disabilities***? Programs and benefits available for those with disabilities can be found by going to the website, www.canadabenefits.gc.ca. This Government of Canada website lists numerous ***provincial and federal programs*** and can be searched according to alphabetical order, program popularity, and programs provided by federal or provincial governments.

A ***brief description*** of each program is provided, along with eligibility criterium, application information and forms, and pertinent financial, tax slip, and contact information.

Programs such as the Opportunities Fund for Persons with Disabilities and the Canada Pension Plan Disability Benefits, both federal programs, and the Property Tax Deferment Program (British Columbia), and Veterans Disability Program (Ontario) are examples of the many programs outlined.

This website also lists ***programs and benefits*** available to other populations such as ***parents, students, seniors*** and ***Aboriginal Peoples***.

GST/HST 82(9)
NEW HOUSING REBATE In December, 2007, CRA introduced 8-page Guide GST/HST Memoranda Series, 19.3.1.2, which explains how to derive a "rebate factor" to determine the GST payable and GST new housing rebate where a stated price for a single unit residential complex or a residential condominium unit is GST included and net of the new housing rebate.

Contact us to answer your questions, schedule a meeting, get a second opinion, refer a friend, order a book, receive a brochure on services and fees, create a financial plan and more.
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