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2012 TAX PLANNING FOURTH QUARTER

YEAR-END TAX PLANNING

As the end of 2012 nears we are pleased to offer the following tax planning considerations:

1. Certain expenditures made by individuals by December 31, 2012 will be eligible for 2012 tax deductions or credits including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union professional or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness and arts amounts.

2. You have until March 1, 2013 to make tax deductible Registered Retirement Savings Plan (RRSP) contributions for the 2012 year.
   Consider contributing to a spousal RRSP to achieve income splitting in the future.

3. If you own a business, consider paying a reasonable salary to family members for services rendered to the business.

4. An individual whose 2012 net income exceeds $69,562 will lose all, or part, of their old age security.
   Senior citizens will begin to lose their income tax age credit if net income exceeds $33,884.
   Contact our office for assistance in managing 2012 personal income.

5. Consider purchasing assets eligible for capital cost allowance before the year-end if you own a business or are self-employed.

6. Consider selling capital properties with an underlying capital loss prior to the year-end if you had taxable capital gains in the year, or any of the preceding three years. This capital loss may be offset against the capital gains.

7. Registered Education Savings Plan (RESP)
   A Canada Education Savings Grant (CESG) for RESP contributions will be permitted equal to 20% of annual contributions for children (maximum $500 per child per year).

8. Health and dental premiums for the self-employed
   Individuals will be allowed to deduct amounts payable for Private Health Service Plan coverage in computing business income provided they meet certain criteria.

9. A refund of Employment Insurance paid for non-arm's length employees in your business may be available upon application to CRA.

10. Taxpayers that receive “eligible” dividends from private and public corporations may have a significantly lower tax rate on the dividends. Notification from the corporation to the shareholder is required.

11. Eligible public transit passes will be entitled to a tax credit.

12. A Registered Disability Savings Plan may be established for a person who is eligible for the Disability Tax Credit. Non-deductible contributions to a lifetime maximum of $200,000 are permitted which are eligible for tax-deferred grants and bonds. Please contact our office for details.

13. If required income or Forms have not been reported in the past to the CRA, a Voluntary Disclosure to the CRA may be available to avoid penalties.

2012 REMUNERATION

Some general guidelines to follow in remunerating the owner of a Canadian-controlled private corporation include:

1. Bonusing down active business earnings in excess of the annual business limit may reduce the overall tax. However, leaving corporate active business income over this amount presents a tax deferral. Professional advice is needed in this area.

2. Notification must be made to the shareholders when an “eligible” dividend is paid - usually in the form of a letter dated on the date of the dividend declaration. If all shareholders are directors, the notification may be made in the Directors’ Minutes.
   Please contact your tax advisor for advice before paying an eligible or ineligible dividend.

3. Elect to pay out tax-free “capital dividend account” dividends.

4. Consider paying dividends to obtain a refund of “refundable dividend tax on hand”.

5. Corporate earnings in excess of personal requirements could be left in the company to obtain a tax deferral. The effect on the “Qualified Small Business Corporation” status should be reviewed before selling the shares.

6. Dividend income, as opposed to salaries, will reduce an individual’s cumulative net investment loss balance thereby providing greater access to the capital gain exemption.

7. Excessive personal income affects receipts subject to clawbacks, such as old age security, the age credit, child tax benefits, and GST credits.

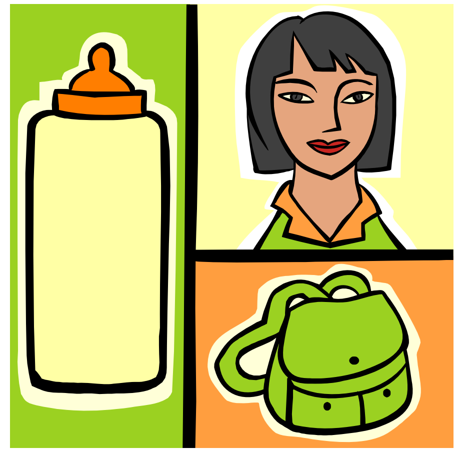
8. Salary payments require source deductions to be remitted to the Canada Revenue Agency on a timely basis.

9. Individuals that wish to contribute to the Canada Pension Plan or a Registered Retirement Savings Plan may require a salary to create “earned income”.

10. Salaries paid to family members must be reasonable.

PERSONAL TAX RETURNS

CHILD CARE EXPENSES (CCEs) - NANNY COSTS



In a June 13, 2012 Technical Interpretation, CRA notes that specific Nanny costs such as transportation to travel from the caregiver's country of permanent residence to the location of work in Canada, interim medical insurance coverage, and Ontario's Workplace Safety and Insurance Board (WSIB) employer premiums under the Ontario Live-in Caregiver Program may be eligible CCEs.

The Ontario WSIB identifies that: "a private householder who employs a domestic worker for more than 24 hours a week must register as an employer of domestic workers with the WSIB..."

This category includes employment of domestic workers such as babysitters, nannies and nursemaids.

EMPLOYMENT INCOME

EMPLOYEE PROFIT SHARING PLANS

The March 29, 2012 Federal Budget proposed changes to Employee Profit Sharing Plans (EPSPs).

In the past, these Plans may have been used to split income, defer tax, and avoid CPP and EI payments.

The proposed measures incorporate the concepts of "specified employees" and "excess EPSP amounts". "Specified employees" will be required to pay tax at the top marginal rate in their provincial jurisdiction (29% federally in addition to the top applicable provincial marginal rate) on "excess EPSP amounts" which are generally calculated as amounts greater than 20% of the individual's salary.

CRA considers "specified employees" to be employees who have a significant equity interest in their employer or do not deal at arm's length with their employer.

INSURABLE EARNINGS

In a July 13, 2012 Tax Court of Canada case, the issue was whether the CRA properly calculated the insurable hours and insurable earnings of the Appellant while he worked for a fishing and hunting outfitter in the Thunder Bay region in 2008.

Taxpayer Wins!

The Court noted that the Appellant worked from May 18, 2008 to September 29, 2008, 40 hours per week, for insurable earnings of $600 per week, plus board and lodging valued at $450 per week for a total of $1,050 per week.

REIMBURSEMENT OF MOVING EXPENSES

In a June 26, 2012 Technical Interpretation, CRA notes that:

- Where an employer reimburses an employee for eligible expenses incurred in moving the employee and the employee's family and household effects either because the employee has been transferred from one establishment of the employer to another or because of having accepted employment at a place other than where the former home was located, this reimbursement is not considered as conferring a taxable benefit on the employee.
- While the location of the former home within Canada is generally required to determine whether moving expenses are deductible by an employee who does not receive a reimbursement from his/her employer, it has no impact in determining whether an employer who has reimbursed such expenses has conferred a taxable benefit on the employee.

FITNESS MEMBERSHIP

In a June 26, 2012 Technical Interpretation, CRA notes that generally, the payment or reimbursement of fitness membership fees by an employer results in a taxable benefit to the employee unless the employer can demonstrate that the membership is principally for the employer's advantage.

BUSINESS INCOME

JOINT VENTURES

In a June 25, 2012 Technical Interpretation, CRA notes that their new administrative policy requires each participant in a joint venture to calculate its net income from the joint venture for the period ending on the participant's fiscal period end. This new administrative policy, which came into effect for taxation years ending after March 22, 2011, means that a participant in a joint venture is no longer eligible to compute income as if the joint venture had a separate fiscal period.

SALARIES TO CHILDREN

In a September 6, 2012 Tax Court of Canada case, the Appellant operated a business that specialized in supplying custom window coverings and, in 2007 and 2008, deducted the amounts of $18,000 and $7,000, respectively, for wages paid to her two children (aged 15-16 and 13-14) for services that they provided to the business.

Rather than pay wages, the Appellant paid for some of the children's extraordinary expenditures to reflect the wages.

Taxpayer wins-partly

The Court concluded that it is likely that the expenditures have both business and personal elements.

Based on the evidence, the Court allowed a deduction for 50% of the amounts claimed.

Editor's comment

It usually reduces the risk if regular salaries are paid to provide reasonable remuneration to family members who provide services to your business.

OWNER-MANAGER REMUNERATION

DIRECTOR LIABILITY

Some points to consider with respect to director liability include:

1. The Excise Tax Act and the Income Tax Act hold directors personally liable for unremitted GST/HST, payroll withholdings, and interest and penalties. Directors are not necessarily liable for unpaid tax of the corporation.

2. A "director" is not defined in the Act and could include both de jure directors (lawfully and validly appointed according to corporate legislation) and de facto directors (persons that are acting as directors).

3. CRA may only take action against the director if they do so within two years of the resignation of the director. Therefore, resignation is very important as it limits liability and starts a two-year limitation period running.

4. It is important to stop acting as a director or manager, after resignation, such as not signing corporate documents. Also, appointing a new director further establishes that you have resigned your position as a director.

Legal advice may be needed.

ESTATE PLANNING

CANADA PENSION PLAN (CPP)

Under new CPP rules, individuals that start receiving their CPP before age 65 (as early as age 60) will suffer a greater penalty but, will have increased benefits if they defer past age 65 (as late as age 70).

For example, if an individual started receiving CPP payments early, previously the penalty was 0.5% per month or 6% per annum. If a person started five years early at age 60, he/she would suffer a 30% penalty. This 0.5% per month penalty has been increased to 0.6% to be phased in up to the year 2016. The benefit for deferring a receipt of CPP payments past 65 is proposed to increase from 0.5% to 0.7% per month and is phased in by 2013.

Therefore, if he/she commenced to receive this at age 60, the amounts that would be received would be 36% less (60 months x .6%). If they waited until age 70, they would receive 42% more (60 months x .7%).

TAX-FREE SAVINGS ACCOUNT (TFSA)

As the TFSA is available at $5,000 per year increments since 2009, by 2012 an individual aged 18 or over in the year is entitled to a maximum of $20,000 of contributions. Some points to consider include:

1. As dividends and capital gains are entitled to special tax treatment (dividend tax credits and a 50% tax rate), it is usually best to have investments with this type of income in non-registered plans.

2. Withdrawals made in the year cannot be replenished until the following year with the exception of qualifying direct transfers.

3. Foreign income which is subject to foreign taxes will not be eligible for the foreign tax credit in the TFSA.

4. Persons subject to U.S. tax, such as U.S. citizens, will not receive benefit for U.S. purposes as the income earned in the TFSA will be taxed on the U.S. tax return.

INTERNATIONAL

IRS UNVEILS NEW STREAMLINED FILING COMPLIANCE PROCEDURES FOR NON-RESIDENT, NON-FILER U.S. TAXPAYERS

The IRS has paved the way for non-resident, non-filing U.S. taxpayers to comply with their unmet U.S. tax filing obligations with less administrative burdens. The procedure is available for U.S. taxpayers who have resided outside the U.S. since January 1, 2009 and who haven't filed a U.S. tax return during the same period.

Compliance Risk Assessment

The new procedure is specifically designed for taxpayers who present a "low compliance risk." For these taxpayers, retroactive relief for failure to timely elect income deferral on RRSPs/RRIFs (Form 8891) is also available. Submissions that present high compliance risk aren't eligible for the streamlined processing procedure and may be subject to a full examination.

Participation

In order to participate, a taxpayer must: (1) file delinquent tax returns, with appropriate related information returns (e.g. Form 3520 or 5471), for the past 3 years, (2) file FBARs (Form TD F 90-22.1) for the past 6 years, (3) pay any tax and interest along with the delinquent tax returns, and (4) submit a questionnaire, signed under penalties of perjury, with 20 "yes or no" questions outlining the factors considered in the initial risk assessment.
Specialized U.S. tax advice is needed in this area.

IRS - WHISTLE-BLOWER LEGISLATION

The first award under the IRS Tax Whistle-Blower Legislation was provided to Bradley Birkenfeld, the UBS AG banker who provided information to the IRS on how the bank helped thousands of Americans evade tax.
The award was for $104 million.

The Canada Revenue Agency has no whistle-blower program but relies on leads provided to the Informant Leads Centre to assist in discovering unreported income.

IRS TAXPAYER ADVOCATE SERVICE

This service operates outside of the IRS and operates as an assistance to get IRS issues resolved outside of the normal IRS system if it is merited by the taxpayer’s circumstance.

This service is particularly useful in situations where the taxpayer is expecting a large refund where the IRS is simply taking too long to process the return and issue the refund.
More details on the service can be found at:
http://www.taxpayeradvocate.irs.gov

HOW KURT AND TEAM CAN HELP YOU WITH TAXES

- Oversee annual tax return preparation
- Thorough personal and business tax planning opportunity reviews
- Implementing life insurance to cover taxes at death
- Tax smart portfolio investment strategies
- Small business advanced tax planning
- Tax effective design of retirement cash flows
- Tax wise Will design

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