

FINANCIAL STRATEGIES FROM **KURT ROSENTRETER**

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2011 FIRST QUARTER

PERSONAL TAX

93(1)

MEDICAL EXPENSES

In an October 27, 2010 Technical Interpretation, CRA notes that a dock landing gate, associated with the use of a wheelchair, is a medical expense as a renovation or alteration to a dwelling of the person who lacks normal physical development or has a severe and prolonged mobility impairment. However, to qualify, the expenditure should not increase the value of the dwelling and is not of a type that would normally be incurred by persons who have normal physical development.

Also, an air purifier purchased for a house because of the person's asthma and a compromised immune system may qualify as a medical expense.

MEDICAL AND DISABILITY RELATED INFORMATION

CRA Guide RC4064 provides medical and disability related tax information for people with medical expenses or impairments in physical or mental functions and anyone supporting these people.

Also, if a person has a permanent mobility impairment, and cannot safely use public transportation, he/she may apply for a refund of part of the Federal Excise Tax on gasoline purchased. (Information Sheet XE8, page 24)

DISABILITY TAX CREDIT (DTC)

An individual who is markedly restricted in the basic activities of daily living, or requires 14 or more hours per week to administer Life Sustaining Therapy, may be eligible for the DTC.

For example, the Canadian Diabetes Association website (search: disability tax credit) notes that if a taxpayer or a child uses an intensive insulin management system (IMS) or an insulin pump with respect to Diabetes, they may qualify for the DTC.

EMPLOYMENT INCOME

93(2)

HAIRDRESSERS

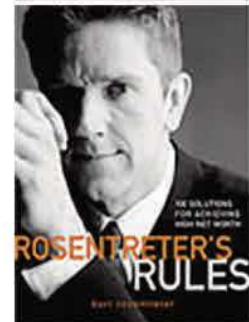
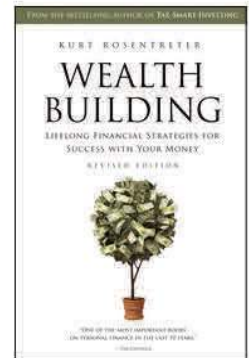
In a November 25, 2009 Tax Court of Canada case, the Court found that the Appellant engaged nine hairdressers in insurable and pensionable employment at the Appellant's hairdressing establishment.

Therefore, both Canada Pension Plan and Employment Insurance premiums had to be paid.

SPECIAL WORKSITE

The Income Tax Act permits an employer to provide a tax-free allowance in respect of board, lodging and transportation while the employee is at a "special worksite" assuming

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that certain criteria are met including that the taxpayer maintains, at another location, a self-contained domestic establishment (SCDE) as the taxpayer's principal place of residence.

INSURABLE EMPLOYMENT

The Employment Insurance Act (EIA) notes that insurable employment does not include the employment of a person that controls more than 40% of the voting shares of the corporation.

It also excludes employment if the employer and employee are not dealing at arm's length and they do not have a substantially similar contract of employment as other arm's length employees. (Professional advice may be needed in this area.)

Also, the Employment Insurance Regulations deem certain persons to be involved in insurable employment including stevedores, lumbering or logging, placement or employment agency, barbering or hairdressing establishments, and passenger vehicle operators.

Each of the categories has their own specific details.



TAXABLE BENEFITS

CRA Guide T4130 provides information on taxable and non-taxable employment benefits and allowances including board and lodging, cellular phone service, child care expense, counseling services, disability related employment, discounts on merchandise, education benefits, gifts and awards, group term life insurance policies, housing, interest-free and low interest loans, internet use, loyalty and other "points programs", meals, medical expenses, moving expenses, municipal officers expense allowance, parking, power saws, premiums under provincial hospitalization, private health service plans, professional membership dues, recreational facilities and club dues, RRSPs, security options, social events, spouse's or common-law partner's travelling expenses, TFSAs, tool reimbursements, transit passes, transportation to and from home, travel allowances, uniforms and special clothing, and wage-loss replacement plans or income maintenance plans.

SCHOLARSHIPS FOR THE CHILDREN OF EMPLOYEES

In a September 29, 2010 External Technical Interpretation, CRA notes that they now accept that where an arm's length employer provides a post-secondary scholarship, bursary or free tuition to family members of an employee under a bona fide Program, the amount may be non-taxable.

BUSINESS/PROPERTY INCOME

93(3)

INTEREST EXPENSE

In an August 10, 2010 Internal Technical Interpretation, CRA notes that normally they consider interest costs in respect of funds borrowed to purchase common shares to be deductible on the basis that there is a reasonable expectation that the common shareholder will receive dividends. These comments are also generally applicable to investments in Mutual Fund Trusts and Mutual Fund Corporations.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

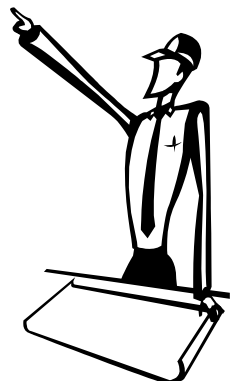
Case 1 - Independent Contractor

In an October 22, 2010 Tax Court of Canada case, given the clear shared common intention to be a subcontractor between the payer and the workers, the Court found that the workers were independent contractors, not employees.

Case 2 - Independent Contractor

In an August 31, 2010 Tax Court of Canada case, the issue was whether the salesman was an independent contractor or engaged in employment income. The Court concluded that the salesperson was an independent contractor and noted that:

1. The worker had signed Written Agreements with the Appellant when he began his working relationship on the basis that he was an independent contractor.



2. The facts that apply in respect to establishing control, ownership of tools, possibility of profit, risk of loss, and integration show that the worker was an independent contractor.
3. No controls were exercised on his services and the worker had the opportunity to make a profit and took on a risk of a loss. He provided his own work tools and his own equipment. He had no job security and was free to accept other employment or contracts while engaged.
4. The test of intent also indicates that the worker was an independent contractor.

Case 3 - Independent Contractor

In a November 16, 2010 Tax Court of Canada case, the Court found that the workers were independent contractors, not employees, and noted that:

1. A mutual intention to create an independent contractor relationship indicates that the individuals were independent contractors, not employees.
2. The workers were able to set their own hours of work, although within certain limits.
3. The workers were able to work for other clients without consent of the payer.
4. The workers used their own vehicles to pick up supplies and charged an hourly rate for the use of their vehicles.
5. The workers carried on their business under a business name, for example, "Cleaning with Care", and had their own liability insurance coverage.

Case 4 - Employee

In a November 22, 2010 Tax Court of Canada case, the Court found that the workers were employees and noted that:

1. The parties did not share a common understanding that the worker was to be self-employed and not an employee. Where the intention of the parties cannot be ascertained, it is necessary to look at all the facts to see the legal relationship.
2. The payer provided all the tools and equipment, except for a keyboard.
3. The worker had no responsibility for investment in management.
4. The worker had no expenses and no liability exposing her to a risk of loss and there was no opportunity for her to increase her income.
5. The worker received instructions and directions from the payer on a daily basis.



OWNER – MANAGER REMUNERATION

93(4)

DIRECTOR LIABILITY

In an October 26, 2010 Tax Court of Canada case, the taxpayer was a director of a corporation that failed to remit payroll source deductions and the director was assessed personally. The taxpayer argued that he had resigned more than two years before CRA assessed him and, therefore, was statute-barred. Also, he argued that he exercised due care and diligence by hiring a bookkeeper to deal with the payroll.

Taxpayer Loses

The Court noted that a resignation does not become effective until the provisions of the Business Corporation Act are met.

With respect to due diligence, the fact that he hired a bookkeeper to handle the payroll was not enough. The taxpayer had not shown that he took action to prevent the bookkeeper's failure to remit the source deductions.

CPP AND EMPLOYEE PROFIT SHARING PLANS (EPSP)

The maximum pensionable earnings for 2011 are \$48,300 with a basic exemption of \$3,500 and an employer/employee rate of 4.95% leaving a maximum employer/employee contribution of \$2,218, or a maximum self-employed contribution of \$4,436. One approach to receive compensation that may not be pensionable is to use a bona fide EPSP. However, some taxpayers choose to have enough pensionable earnings to retain eligibility for CPP disability payments.

Recent court cases indicate that an EPSP can be used to permit the owner-manager to opt out of the CPP system, but may not remove other employees from the CPP and EI systems in respect of their regular remuneration.

Professional assistance is needed in this area.

RELATIONSHIP BREAKDOWN

93(5)

LIVING IN THE SAME RESIDENCE

In a July 27, 2010 External Technical Interpretation, CRA notes that it is possible that both spouses can “live apart” because of a breakdown of their marriage for deductible/taxable alimony purposes even if they still live under the same roof if, for example, the following circumstances are present:

- they occupy separate bedrooms;
- there is a lack of sexual relations;
- there is little or no communication;
- there are no domestic services to each other;
- the spouses receive their mail separately; and
- the spouses have no common social activities.

LUMP-SUM PAYMENTS FOR SPOUSAL SUPPORT ARREARS

In a September 20, 2010 Technical Interpretation, CRA notes that lump-sums paid for arrears of spousal support, even if made under a Court Order, may not be deductible/taxable.

Editor's Comment

The jurisprudence in this area is mixed. Therefore, legal/tax advice may be needed with respect to the deductibility/taxability of arrears payments.

ESTATE PLANNING

93(6)

DONATION SCHEMES

In an October 28, 2010 Federal Court of Appeal case, the Federal Court confirmed the Tax Court decision which found that Mr. M should not receive any donation tax credit even though he did have a cash donation of \$30,000 in return for the inflated \$100,000 donation receipt.

DISBURSEMENT QUOTA - CHARITIES

In a September 24, 2010 External Technical Interpretation, CRA notes that the 2010 Federal Budget repeals the disbursement quota requirement and modifies the capital accumulation rule for charities.

The Budget also extends the Anti-Avoidance Rules to situations where the purpose of a transaction was to delay unduly or avoid the disbursements of the funds by the charity.

CANADA PENSION PLAN (CPP)

New legislation includes many changes to the Canada Pension Plan, most of which take place in 2012.

For example, in 2012 individuals under the age of 65 who work, as well as their employers, will be required to make CPP contributions, even if they are receiving a CPP retirement benefit early. This will be voluntary for individuals age 65 or over, but employers of those opting to participate in the CPP would be required to also contribute.

REFINANCING PRESCRIBED RATE LOANS

Family income splitting may be achieved by making loans between family members at the prescribed interest rate, which is currently 1% until March 31, 2011. This 1% rate has been in effect since the second quarter of 2009. Previous to this, the prescribed interest rate was higher.



Therefore, consideration could be given to entering into new loans and, properly refinancing previous loans from periods before the second quarter of 2009.

DID YOU KNOW

93(9)

PENSIONS

For an individual who has reached age 65 before the end of the year, the types of “pension income” that are eligible for a tax credit on up to \$2,000 and for splitting with a spouse or common-law partner include:

- a life annuity out of a superannuation or pension plan;
- an annuity payment out of a Registered Retirement Savings Plan;
- a payment out of a Registered Retirement Income Fund;
- an annuity payment from a Deferred Profit Sharing Plan; and
- the interest portion of certain other annuities.

For example, if a person does not have any otherwise qualifying “pension income”, is age 65 or over, and does not want to draw down on registered assets; he/she could consider purchasing a non-registered annuity. The deposit should be enough to produce at least \$2,000 of interest income which qualifies for the pension income amount.

Also, individuals that are 65 years old with an RRSP may wish to consider transferring a portion of the RRSP into an annuity or into a Registered Retirement Income Fund on which pension income may be received. Professional advice may be needed in this area.

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