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PERSONAL TAX

78(1)

MEDICAL EXPENSES - TUITION, TRAVEL

In a March 12, 2007 External Technical Interpretation, the Canada Revenue Agency (CRA) notes that:

1. Tuition and Residential Costs

Where, due to a physical or mental handicap, an individual is certified to require specialized care or care and training at a school or institution, the cost of such care and training may be an eligible medical expense.

2. Travel Expenses

An individual may claim transportation and travel expenses as medical expenses if substantially equivalent medical services were not available in the locality where the individual resides.

In addition, costs related to a person who accompanies the individual may qualify as medical expenses where the individual has been certified by a medical practitioner to be incapable of travelling without the assistance of an attendant.

MEDICAL EXPENSES - DRUGS

In a January 15, 2007 External Technical Interpretation, the CRA notes that certain drugs, medicaments or other preparations prescribed by a medical practitioner or dentist and recorded by a pharmacist are medical expenses.

MOVING EXPENSES

In a February 16, 2007 Tax Court of Canada case, the Court permitted most of the moving expenses including \$3,500 for storage and transportation of household effects, \$350 for travel, \$50 for meals, \$96 for accommodation, \$16,200 for real estate commissions, \$451 and \$1,276 for legal services, and \$2,534 for land transfer tax.

TRANSIT PASS CREDIT (TPC)

Taxpayers may claim a TPC for passes for buses, commuter trains, local ferries, streetcars, and subways on behalf of family members including spouses and children under age 19.

The Transit Pass must be for at least one month's duration and should contain information such as the period for which the pass is valid, the transit authority that issued the pass, the amount paid for the pass, and the identity of the rider.

In a December, 2006 CRA Interpretation, CRA confirmed that the TPC would not be available for daily or weekly passes.

ON-LINE TUITION FEES

In a November 10, 2006 Tax Court of Canada case, the taxpayer was enrolled in an on-line Master of Science postgraduate degree at the University of Liverpool in England. The tuition fees were \$16,278. The program was taken exclusively over the Internet while the taxpayer was physically in Canada.

Taxpayer Wins!

The Court permitted a tax credit for the on-line tuition fees.

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FITNESS TAX CREDIT

Effective January 1, 2007, parents who enroll children under the age of 16 in organized sports will be eligible for a Fitness Tax Credit. Eligible programs must include at least thirty minutes of physical activity for kids under ten and an hour for those ten and over. The program must last a minimum of one session a week for eight weeks, except for camps where kids get a full week of exercise.

Qualifying costs could also include membership fees at facilities and community centres, fees charged for teams or programs at schools that are managed either by the school or a third party, camps with a physical activity theme, and fees for training or coaching courses, as long as they meet the physical activity requirement.

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EMPLOYMENT INCOME

78(2)

FITNESS CLUB MEMBERSHIPS

In a February 19, 2007 External Technical Interpretation, CRA notes that generally the payment or reimbursement of club dues or membership fees by an employer results in a taxable benefit to the employee. However, if it is primarily to the employer's advantage for an employee to be a member of a club, the employee will not have a taxable benefit.

In general terms, CRA does not consider a situation to be primarily advantageous to the employer where the employee's membership in a fitness facility is part of an employee-wellness program designed to provide indirect benefits to the employer, such as the employee being healthier and better able to perform his/her duties.

TRADESPeOPLE'S TOOL EXPENSES

The 2006 Federal Budget provides for a deduction for eligible tools acquired by an employed tradesperson on or after May 2, 2006 in excess of \$1,000 to be deductible up to a maximum of \$500. To qualify, the employer must certify that the employee is required to acquire the tools. Also, this does not include used tools and electronic communication devices or processing equipment.

MEAL REIMBURSEMENT

In a January 16, 2007 External Technical Interpretation, CRA notes that an employer may pay a tax-free allowance for travel expenses (including meals) to an employee who is travelling away from the municipality where the employment ordinarily occurs. This also applies to reimbursements.

EMPLOYMENT VS. INDEPENDENT CONTRACTOR

In a February 6, 2007 Federal Court of

Appeal case, eleven drywallers were found to be employees, not independent contractors. The Court noted that there was no evidence as to the independent contractor intention or status.

In a September 15, 2005 Tax Court of Canada case, the Court found that twenty-seven workers were found to be employees not independent contractors. The workers were engaged to complete credit card application forms.

As a result, there are significant extra costs, such as Canada Pension Plan and Employment Insurance, that the payor must now pay.

BUSINESS/PROPERTY INCOME

78(3)

PRIVATE HEALTH SERVICES PLAN (PHSP)

In a February 15, 2007 External Technical Interpretation, CRA notes that business proprietors and partners may deduct premiums payable under a PHSP in respect of the individual and family members living with the individual, within certain dollar limits.

APPRENTICESHIP JOB CREATION TAX CREDIT

The 2006 Federal Budget proposes an Apprenticeship Job Creation Tax Credit equal to 10% of eligible salaries and wages payable in respect of employment after May 1, 2006. The maximum credit is based on \$2,000 per year for each "eligible apprentice".

An "eligible apprentice" is someone who works in a prescribed trade in the first two years of the apprenticeship contract and the contract must be registered under an apprenticeship program including the 45 Red Seal Trades outlined in www.red-seal.ca.

TAX WITHHOLDING ON TIPS

In a February, 2007 External Technical

Interpretation, CRA notes that withholding of tax on gratuities is dependent on the level of employer control over their distribution. An employer is considered to have control over the tips where the employer is able to direct how the tips will be paid.

This could be done through a policy where the tips are a mandatory service charge added to the clients' bills or pursuant to a sharing arrangement set out in an employment contract that outlines how the tips will be divided. Also, tips that are included in the employer's business income are also considered to be under the employer's control.

Credit card tips directed at a server where the tip amount is not included as business income of the employer, or subject to a sharing arrangement, would not be considered to be under the control of the employer and would not be subject to payroll withholding.

NEW DIVIDEND RULES

In a December 20, 2006 Government Release, CRA made the following comments with respect to designation of "eligible dividends":

Notification of Shareholders

1. For 2007 and subsequent taxation years, for public corporations, acceptable methods of making a designation include posting a notice on the corporation's website, in corporate quarterly or annual reports or shareholder publications.

Also, if a public corporation issues a press release announcing a declaration of a dividend, a statement in the press release indicating that the dividend is an "eligible dividend" will be acceptable.

2. For 2007 and subsequent taxation years, the notification requirements for all other corporations must be met each time a dividend is paid. Examples of notification could

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include identifying “eligible dividends” through letters to shareholders and dividend cheque stubs or, where all shareholders are Directors of a corporation, a notification in the minutes.

Notification of a designation must be given to all shareholders who receive a dividend, including those outside the country. A dividend received by a non-resident shareholder cannot qualify as an “eligible dividend”.

CONSTRUCTION REPORTING

The Income Tax Act requires construction contractors to report payments to subcontractors in the course of “construction activities” (along with the subcontractor’s Business Number or Social Insurance Number) on Form T5018 on either a calendar or fiscal period basis within six months after the end of the reporting period. Failure to file Form T5018 could result in a penalty.

Payments of less than \$500 per year per subcontractor do not have to be reported.

“Construction activities” include the erection, excavation, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling or removal of all, or any part, of a building, structure, surface or sub-surface construction, or any similar property if the person’s business income for that reporting period is derived primarily from those activities. See CRA Guide T4027 for details.

OWNER-MANAGER REMUNERATION

78(4)

2007 INDIVIDUAL PENSION PLANS

An Individual Pension Plan (“IPP”) is a pension obligation between a sponsoring company and its employee(s). It can be offered selectively (i.e. to owner-

managers) and retroactively. The retroactive aspect allows a large tax-deductible deposit representing past service going back to potentially 1991.

With this large first year deposit and the regular annual deposits, one can achieve a much larger tax sheltered retirement account than available in an RRSP program alone.

An IPP is most advantageous for a person who is age 50+ and has been taking regular salaries out of his/her corporation.

2007 FEDERAL BUDGET

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On March 19, 2007, the Honourable Jim Flaherty, Minister of Finance, presented his second Budget to the House of Commons.

Some of the tax proposals include:

A. PERSONAL INCOME TAX

1. Registered Disability Savings Plan (“RDSP”)

An RDSP, with a Canada Disability Savings Grant (“CDSG”) and a Canada Disability Savings Bond (“CDSB”), is proposed for 2008.

Eligibility

Any person eligible for the disability tax credit (“DTC”), or their parent or legal representative, will be eligible to establish an RDSP.

Contributions

Contributions to an RDSP are limited to a lifetime maximum of \$200,000 in respect of the beneficiary, with no annual limit. There will be no restriction on who can contribute. Contributions will be permitted until the end of the year in which the beneficiary attains 59 years of age.

Canada Disability Savings Grants (“CDSGs”)

RDSP contributions will qualify for

CDSGs at matching rates of 100%, 200% or 300%, depending on family net income and the amount contributed.

There will be a lifetime limit of \$70,000 on CDSGs. An RDSP will be eligible to receive CDSGs until the end of the year in which the beneficiary attains 49 years of age.

Canada Disability Savings Bonds (“CDSBs”)

CDSBs of up to \$1,000 will be paid annually to the RDSPs of low and modest-income beneficiaries and families.

There will be a lifetime limit of \$20,000. An RDSP will be eligible to receive CDSBs until the end of the year in which the beneficiary attains 49 years of age.

2. Private Foundations

Budget 2007 proposes to eliminate the taxation of capital gains on donations of publicly listed securities to private foundations.

This applies to gifts made on or after March 19, 2007.

3. Registered Education Savings Plans (“RESP”)

The \$4,000 annual RESP contribution limit will be eliminated and the lifetime RESP contribution limit will be increased to \$50,000 from \$42,000.

The maximum annual RESP contribution qualifying for the 20% CESG will be increased to \$2,500 from \$2,000. The \$7,200 lifetime CESG limit will be unaffected by this change.

These changes apply to contributions made after 2006.

4. Elementary and Secondary School Scholarships

Budget 2007 proposes to fully exempt scholarships and bursaries provided to

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attend elementary and secondary schools commencing in 2007.

5. New Child Tax Credit

Budget 2007 proposes to introduce a new \$2,000 non-refundable child tax credit for parents for each child under the age of 18 years at the end of a taxation year. The tax credit will be calculated at the lowest personal income tax rate for the taxation year (i.e. 15.5 % in 2007). This will take effect in 2007.

6. Lifetime Capital Gains Exemption ("LCGE")

Budget 2007 proposes to increase the \$500,000 LCGE (qualified small business corporation shares and qualified farm and fishing property) up to \$750,000. This applies to dispositions on or after March 19, 2007.

7. Meal Expenses of Truck Drivers

Budget 2007 proposes to increase the deductible portion of the cost of food and beverages consumed by long-haul truck drivers during eligible periods of travel (away for at least 24 continuous hours and 160 kilometres from the residential or business location) over five years.

8. Phased Retirement

To provide more flexibility to employers to offer phased-in retirement programs, and to increase the reward to older workers from full-time work, Budget 2007 proposes to allow an employee to receive pension benefits from a defined benefit RPP and simultaneously accrue further benefits for work performed with the same employer after full or partial retirement.

9. Age Limit for Maturing RPPs, RRSps and DPSPs

Budget 2007 proposes to increase, for the 2007 and subsequent calendar years, the conversion age for these

plans to 71 years of age from 69 years of age.

B. BUSINESS INCOME TAX

1. Temporary Incentive for Manufacturing and Processing Machinery and Equipment

Budget 2007 proposes to temporarily increase the Capital Cost Allowance rate for manufacturing and processing machinery and equipment to a 50% straight-line rate.

This applies to equipment acquired on or after March 19, 2007 and before 2009.

2. International Taxation

(i) Canada-U.S. Tax Treaty: Elimination of Withholding Tax on Interest

An exemption from withholding tax on both arm's length and non-arm's length interest is to be implemented in the Canada-U.S. Tax Treaty.

This applies to interest paid on or after the date on which the withholding tax exemption in the proposed Canada-U.S. Tax Treaty comes into effect.

(ii) International Tax Fairness Initiative

Budget 2007 proposes to restrict the deductibility of interest paid on debt used to invest in foreign affiliates.

3. Investment Tax Credit for Child Care Spaces

Budget 2007 proposes to provide eligible taxpayers with a 25% non-refundable investment tax credit on eligible expenditures, to a maximum credit of \$10,000 per child care space created.

4. Remittance and Filing Thresholds

Budget 2007 proposes to ease and broaden certain tax instalment requirements.

C. SALES AND EXCISE TAX MEASURES

Rebate/Green Levy - Vehicles

Introduces a vehicle efficiency incentive rebate of up to \$2,000 for highly fuel-efficient vehicles (6.5 litres or less/100 kms - see www.tc.gc.ca) and a new Green Levy on fuel-inefficient vehicles (13 litres or more/100 kms) of up to \$4,000.

The rebate applies to eligible new vehicle purchases or leases after March 19, 2007.

The Green Levy will apply to new vehicles delivered or imported after March 19, 2007.

ESTATE PLANNING

78(6)

RRSP - FRAUDULENT SCHEME

In an April 2, 2007 Tax Court of Canada case, the taxpayer contended that he was the victim of a scheme by which he was defrauded out of his \$53,300 of RRSP funds and that he should not be required to include any amount in his income.

Taxpayer Loses

The Court noted that even though it is difficult not to be sympathetic with the taxpayer, this cannot have a bearing on the tax consequences that flow from the transactions.

CHARITABLE DONATION

In a February 14, 2007 CRA Release, CRA notes that a gift for tax purposes also includes a gift in kind, which is a gift of property other than cash.

A Registered Charity that accepts a gift in kind can issue a donation receipt for a charitable donation tax credit. The receipt should be for "fair market value".

ELIGIBLE PENSION INCOME

The October 31, 2006 Department of Finance Release announced that persons eligible for the \$2,000 pension income credit will be able to transfer up to 50% of

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this income to a resident spouse/common-law partner in 2007 and subsequent years.

For individuals aged 65 before the end of the year, "pension income" includes lifetime annuity payments from a superannuation or pension plan, an annuity from a Deferred Profit Sharing Plan, or a Registered Retirement Savings Plan, a "payment" from a Registered Retirement Income Fund or the income portion of a general annuity contract.

For individuals under 65 years of age a "qualified pension income" includes lifetime annuity payments under a superannuation or pension plan. It also includes other "pension income" amounts received as a result of the death of the individual's spouse or common-law partner.

Before doing this transfer on the 2007 Personal Tax Return, it is important to consider other tax implications such as the loss of low income credits that may otherwise be available to the recipient spouse.

CHARITABLE DONATION SCHEMES

In a February 9, 2006 Federal Court of Appeal case, the Federal Court upheld the Tax Court decision that denied the Appellant's charitable donation credits

claimed because the donations were not truly for the amount appearing on the receipts. Also, gross negligence penalties were upheld by the Federal Court of Appeal.

GST

78(7)

RESIDENTIAL RENTAL PROPERTY REBATE

In August, 2006, CRA introduced 18-page Guide RC4231 which discusses the GST/HST New Residential Rental Property Rebate.

This Rebate is up to 36% of GST/HST on newly constructed, substantially renovated, or converted residential rental accommodation used for long-term rental.

VACATION PROPERTIES

In a February 26, 2007 Release (GI-025), CRA explains how the GST/HST applies in situations where an individual purchases, uses or sells vacation property.

NEW HOUSING REBATE

In February, 2007, CRA released 20-page Guide RC4028 (GST/HST New Housing Rebate) which provides information for persons who build or buy a new or substantially renovated house, including a

condominium unit and a mobile home, or buy a share of the capital stock of a co-operative housing corporation.

DID YOU KNOW...

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CHARITIES PARTNERSHIP AND OUTREACH PROGRAM

In Guide RC4411, CRA discusses the Charities Partnership and Outreach Program which provides funding to registered charities and non-profit organizations to develop and deliver compliance-related education and training to registered charities.

For example, conferences, workshops, training sessions, research or technical studies, development and dissemination of information, web-based training, education products, and information services are examples of projects that may qualify.

NON-PROFIT ORGANIZATION ("NPO") - RENTAL INCOME

In a March 2, 2007 External Technical Interpretation, CRA notes that where an NPO acquires a property that is considerably in excess of what is needed in the foreseeable future, the rental income on the excess may impair the NPO status.

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