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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 childcare 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

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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 Loses

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.

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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

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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

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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 family 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 reduction and deferral of tax through carrying charges and various tax credits. It also discusses the implications upon leaving Canada.

GST/HST

82(7)

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 inclusive of GST and net of the new housing rebate.

AGRICULTURE AND FISHING

In 11-page July, 2007 GST/HST Memoranda Series, 4.4 Agriculture and Fishing, CRA notes that most supplies of agricultural and fishing products are zero-rated. However, some agricultural products are not zero-rated such as cut flowers, foliage, bedding plants, sod, living trees, firewood, fur and animal hides, feathers, down, processed wool, maple-sugar candy, gravel, stones, rock, soil, and the urine from pregnant mares,

which are taxable.

In addition, services such as chartering a boat for recreational fishing, road clearing services, harvesting services provided to a farmer, and stud or artificial insemination services are also taxable.

CRA also notes that whereas the sale of most farm livestock is zero-rated (cattle, sheep, turkeys, etc.), others which are not raised or kept for human consumption such as horses, pigeons, peacocks, mink, fox and other fur-bearing animals are taxable. However, the sale of meat of animals that are not zero-rated, such as horses, is zero-rated when the meat is supplied as food for human consumption.

DID YOU KNOW...

82(8)

MIDWIVES

In a December 28, 2006 Department of Finance Release, a proposed exemption from the GST/HST for the services of midwives was announced. Services covered by the Health Care Plan of two or more provinces and the services of health professionals regulated by at least five provinces will be exempt from the GST/HST in all provinces.

Midwifery satisfies this criteria. These rules apply to services rendered after December 28, 2006.

CRA AUDIT ACTIVITIES

CRA has 1,250 employees working full-time on underground economy projects. For example, in the last two years CRA enforcement actions in the construction sector resulted in the following:

Number of Audits	24,944
Federal Tax Assessed	\$140 million
Interest and Penalties	\$44 million

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GST New Housing

Rebate Reductions \$36 million

Also, results of the Contract Payment Reporting System (Form T5018) resulted in reassessments of \$88 million of unreported income and identification of 58,903 non-filer and non-registrants

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