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PERSONAL TAX

85(1)

DISABILITY TAX CREDIT TRANSFER

If a disabled person does not need to claim the Disability Tax Credit ("DTC") to reduce his/her tax payable to nil, the unutilized portion may be transferred to a spouse or common-law partner or to another supporting person. Another supporting person may claim the DTC for a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual.

We understand that "support" could include assistance with the basic necessities of living such as food, clothing or shelter. Also, the credit may be transferred to a supporting relative even if the dependent person is not living with the supporting relative.

EDUCATION TAX CREDIT - UNIVERSITY OUTSIDE CANADA

In an August 28, 2008 External Technical Interpretation, CRA notes that a fee to attend an educational institution located outside Canada qualifies for the tuition credit if it is recognized by an accrediting body (that is nationally accepted in that country) as being an educational institution which confers degrees, at least at the bachelor or equivalent level.

MEDICAL EXPENSES - TRAVEL

In an October 23, 2008 External Technical Interpretation, CRA notes that amounts paid by an individual to a "medical practitioner" or to a "public or licensed private hospital" to obtain medical services qualify as medical expenses.

Qualifying medical expenses can be in respect of amounts paid to persons, or for services received, either within or outside of Canada.

TRANSPORTATION AND TRAVEL EXPENSES

An individual is entitled to claim transportation and travel expenses if he/she travels not less than 80 kilometres and, substantially equivalent medical services were not available in the individual's locality.

Editor's Comment

In a March 27, 2008 Tax Court of Canada case, the Tax Court found that amounts paid to an alternative medical provider such as an acupuncturist in Ontario, may be eligible medical expenses even though the acupuncturist was not regulated under the provincial medical association at that time.

This decision has now been overturned in the Federal Court of Appeal.

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CANADA CHILD TAX BENEFIT ("CCTB")

It is often difficult to determine who is the "eligible individual" for purposes of receiving the CCTB in marriage breakdown situations.

In an October 21, 2008 Tax Court of Canada case, the Court concluded that the "eligible individual" (the person who primarily fulfills the responsibility for the care and upbringing of the child) was, in this case, two-thirds of the year the father and one-third, the mother.

In a February 26, 2008 Tax Court of Canada case, the Court determined that the father was the "eligible individual" because the child spent 12 out of every 14 days with the father.

In two other Tax Court of Canada cases the mother was successful in overturning CRA's rejection and qualifying for the

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CCTB.

EMPLOYMENT INCOME

85(2)

LEGAL OBLIGATIONS OF DEPARTING EMPLOYEES

An October 9, 2008 Supreme Court of Canada case confirms that a departing employee has a legal obligation to their former employer when they accept employment with a competitor.

In this case, a branch manager of RBC Dominion Securities assisted in the departure of himself and a number of other employees to commence employment with Merrill Lynch. The employees used information and solicited business clients of RBC in their new employment with Merrill Lynch.

The SCC awarded damages to RBC of approximately \$1.5 million thereby confirming that a departing employee in a managerial position must act in good faith, such as encouraging other employees to continue in the employment with RBC, as opposed to encouraging them to leave to join a competitor.

RBC successfully argued that the former employees had a fiduciary duty because of their key roles with RBC and RBC's vulnerability under the circumstances.

EMPLOYEE TRAINING

CRA's Income Tax Technical News (ITTN) No. 13 provides that when training is taken by an employee primarily for the benefit of the employer, there is no taxable benefit, whether or not this employer-paid training leads to a degree, diploma or certificate. Accordingly, costs are deductible to the employer and not a taxable benefit to the employee.

This was also discussed in an August 29, 2007 Internal Technical Interpretation where CRA noted that employer-paid

training costs for the son/employee of the sole shareholder to upgrade his employer-related skills would normally be deductible to the employer and not a taxable benefit to the son assuming the criteria in ITTN No. 13 is met.

SCHOLARSHIPS

In two March 7, 2008 Tax Court of Canada cases, the taxpayers were successful in overturning CRA's employment income reassessment. In both cases, the taxpayers were employees of Dow Chemical Canada and their children received scholarships of \$3,000 under the Company Scholarship Program. CRA included these amounts as employment income in the parent's hands.

More Good News for Dimaria and Bartley!

CRA's appeal to the Federal Court of Appeal on December 9, 2008 has been dismissed by the Court.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

In three Federal Court of Appeal cases, the Federal Court confirmed the Tax Court decision that in all three cases the workers were employees of the payor, not independent contractors, and the payor was required to remit Employment Insurance and Canada Pension Plan contributions. Also, the workers were not allowed to deduct business expenses.

The first case consisted of 130 health care workers who were placed by the Appellant in a number of health care facilities for short-term work. The second case was a worker for a family corporation. The third case was simply a worker being treated as an employee of the payor.

BUSINESS/PROPERTY INCOME

85(3)

TRAVEL EXPENSES

In a September 30, 2008 Tax Court of Canada case, the taxpayers owned a rental property in Florida in which they made several trips to meet with the condo association to review the interview process for renting the property, to repair and paint the property, to inspect the property and to purchase minor items for the property. The taxpayers deducted the motor vehicle expenses to travel to Florida. CRA disallowed these expenses on the basis that the property was managed by an independent company and the travel and motor vehicle expenses were of a personal nature.

Taxpayer Wins!

The Court accepted the taxpayers' evidence that the trips did not have a personal component. Therefore, the travel expenses were allowed. The travel expenses were supported by a log which recorded 14,596 kilometres for the trips in 2001 and 10,927 kilometres for the trips in 2002.

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT ("SR&ED")

In a November 17, 2008 Release, CRA discussed the SR&ED Eligibility Self-Assessment Tool to earn income tax credits.

CRA notes that the Eligibility Self-Assessment Tool is a web-based tool consisting of a series of questions that address the SR&ED eligibility requirements.

CRA also has a CD-Rom, brochure and leaflet to explain the SR&ED Program.

For more information see www.cra.gc.ca/sred/index.html.

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DIRECTOR LIABILITY

85(4)

DIRECTOR LIABILITY - ADMINISTRATOR OF NON-PROFIT ORGANIZATION

In a June 2, 2008 Tax Court of Canada case, CRA assessed the taxpayer in her capacity as director of the non-profit organization for unremitted GST.

Taxpayer Wins!

The Court found that she exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised under these circumstances. She therefore was exempt from the personal liability on the unremitted GST.

The Court noted that she was 23 years old with no business experience and no post-secondary education when she became a director of the organization because of her interest in the organization's objectives. She was assigned the role of secretary but was limited to preparing the minutes. She did not sign cheques.

The Court found that the Appellant has discharged her burden of proof on the balance of probabilities, and that she has shown that she acted with reasonable care, prudence and diligence given the circumstances of this case.

MARRIAGE BREAKDOWN

85(5)

ARREARS PAYMENT

In an August 22, 2008 Tax Court of Canada case, the taxpayer was ordered by the Ontario Superior Court on December 11, 2003 to pay interim spousal support to the former spouse of \$3,600 per month retroactive to November 16, 2001.

The retroactive payment under this Order totalled \$90,000 and was paid in April, 2004. The Appellant also commenced to pay \$3,600 per month to his former spouse effective the first day of January, 2004.

CRA disallowed the \$90,000 arrears payment but allowed the monthly payments in 2004.

Taxpayer Wins!

The Court determined that the \$90,000 arrears payment was deductible. The payment of the \$90,000 was exactly equivalent to the arrears.

PRIOR PAYMENTS

Spousal support payments made prior to a Written Separation Agreement will not be deductible unless the agreement specifically provides for this. For example, in one case, even though the lawyers exchanged correspondence, they did not reach a final agreement in time and the prior year payments were not deductible.

RRSP DIVISION OF MATRIMONIAL PROPERTY

In an October 16, 2008 External Technical Interpretation, CRA notes that the Income Tax Act permits a direct transfer of an amount from an individual's RRSP to an RRSP of which his/her former spouse is the annuitant, where the payor and recipient are living separate and apart. The payment or transfer must be made under a Decree, Order or Judgment of a competent tribunal or under a Written Separation Agreement, and the transfer or payment relates to the division of property in settlement of rights arising on the breakdown of a marriage.

ESTATE PLANNING

85(6)

STRUCTURED SETTLEMENT

In a 2008 Advance Income Tax Ruling, an individual (Plaintiff) was injured and commenced an action for damages against various Defendants. In an out of court settlement, the casualty insurer of the Defendants will assign their rights to an assignment company who will purchase a single premium annuity contract with a life insurance company to provide the proposed periodic payments to be received under a structured settlement arrangement by the Plaintiff.

The assignment company will direct the life insurance company to pay the periodic payments under an annuity contract to the Plaintiff or the Plaintiff's Estate. Such payments will not be taxable in the hands of the Plaintiff.

CANADA PENSION PLAN ("CPP") - THE CHILD REARING DROPOUT ("CRDO") PROVISION

This CRDO provision relates to periods of time when a CPP applicant's earnings from work were low or zero because he/she was raising children under the age of seven. The years for this period of time can be eliminated from the applicant's contributory period.

In general, to qualify, the applicant must have been receiving Family Allowances or been entitled to the Canada Child Tax Benefit. The person must have been the primary caregiver of the child.

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DID YOU KNOW...

85(7)

CREDITOR PROTECTION

Amendments to the Bankruptcy and Insolvency Act that extend creditor

protection to all RRSPs, RRIFs and DPSPs came into force on July 7, 2008. The provision is subject to a clawback of contributions made in the twelve months prior to bankruptcy subject to overriding protection under certain provincial legislation.

Also, new regulations with respect to unpaid wages came into force at that time.

Editor's Comment

This is a specialized area which may need assistance from a Bankruptcy Trustee.

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