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PERSONAL TAX

89(1)

HOME RENOVATION TAX CREDIT ("HRTC")

In Technical Interpretations, CRA notes that:

- (i) Individuals may claim on their 2009 personal tax returns a 15% tax credit on renovations to an eligible dwelling in Canada to a maximum of \$1,350 (\$10,000 - \$1,000 = \$9,000 @ 15%). Acceptable documentation will be needed.

Expenditures must be incurred from January 28, 2009 to January 31, 2010.

- (ii) Renovations incurred in respect of common areas of a condominium will also qualify for the HRTC.

Therefore, the HRTC will be available for eligible expenditures incurred to renovate the condominium unit as well as the individual's share of the costs in respect of

common areas. The condominium corporation must provide documentation to individual owners for their share of the total cost of common area costs.

- (iii) Examples of expenditures that may qualify include siding, eavestroughs, soffits, linoleum flooring, air conditioners, heat pumps, co-operative housing unit renovations, custom draperies, home security system, landscaping costs, an outdoor sauna building, solar panels, wireless broadband tower, waterlines, boilers, central air conditioning unit, renovations to a mobile home, hot tub cover gazebo, insulating the exterior of a house, wood-fired outdoor boilers, sandblasting of exterior brick, laying sod, a deck, solar panels, kitchen renovations, trees, perennial shrubs and flowers, attached shelving, etc.

However, the labour portion of work performed by the owner of the house does not qualify.

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- (iv) Eligible expenses for goods acquired after January 27, 2009 and before February 1, 2010 will still qualify even if they are installed after January 31, 2010. If an eligible expense involves work performed by a contractor or a third party, and the work is not completed by the end of the eligible period, only the portion that is completed before February 1, 2010 will qualify even if a payment has been made.

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Also, there is no requirement that homeowners pay the amount in full before the deadline.

Acceptable documentation includes agreements, invoices and receipts that state:

- the vendor/contractor, their business address and their GST/HST Registration Number (if applicable);
- a description of the goods and the date when the goods were purchased;
- the date when the goods were delivered and/or when the work or services were performed;
- a description of the work performed including the address where the work was performed;
- the amount of the invoice;
- proof of payment;
- a statement from a co-operative housing corporation or condominium corporation signed by an authorized individual identifying the amounts incurred for the renovation or the alteration work, your portion of the expenses if the work is performed on common areas, information that identifies the vendor/contractor, their business address, and, if applicable, the GST/HST Registration Number, and a description of the work

performed and the dates when the work or services were performed.

- (v) Payments to a new home builder for the cost of upgrades to a new home are not eligible for the HRTC if the upgrades were made by the builder before title passed to the purchaser.
- (vi) Qualifying expenditures do not include outlays or expenses made or incurred under the terms of an agreement entered into before January 28, 2009, even if the work is done after January 28, 2009.

See www.cra.gc.ca/hrtc for more information.

MEDICAL EXPENSES - TRAVEL

In an October 1, 2009 Tax Court of Canada case, the taxpayer lived in Nanaimo, British Columbia but had bypass surgery in Victoria and claimed medical expenses totaling \$12,248. The taxpayer was certified to be incapable of travelling without the assistance of an attendant.

Initially, CRA disallowed \$3,912 of medical expenses pertaining to expenses incurred by his accompanying wife for accommodations and meals in Victoria during the eighteen days that he was hospitalized for bypass surgery.

Taxpayer Wins!

The Court noted that medical travel expenses embrace not simply the cost of movement from one place to

another, but also the attendant cost of living away from home during the treatment period.

COMMON-LAW RELATIONSHIP

In a November 13, 2009 Tax Court of Canada case, the issue was whether Ms. B was in a common-law relationship with Mr. V which would have adversely impacted her GST credit and her Child Tax Benefit amounts. Both incomes of common-law partners are considered in determining if they qualify for these amounts.

The Court noted that the definition of common-law partner turns entirely upon whether the persons cohabited in a conjugal relationship.

The characteristics of shared shelter, sexual and personal behavior, services, social activities, economic support, children and societal perception are relevant, but not all are necessary. The weight given to each factor varies on a case-to-case basis.

Taxpayer Loses

The Court noted that she was in a common-law relationship because:

1. they regularly made meals for one another and did one another's laundry;
2. Ms. B did household tasks, they dined out together and went to functions such as bowling, and mini golf;
3. they had sexual relations on occasion and neither was seeing anyone else;

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4. they exchanged gifts at Christmas and birthdays;
5. they shared personal discussions and he assisted her with considerable personal and financial difficulties;
6. he was named on her car insurance as a driver of her car;
7. he provided financial support to her, and the neighbours regarded them as a couple; and
8. she sent letters to government authorities indicating that they were a common-law couple.

POST-SECONDARY STUDENTS OUTSIDE CANADA

CRA's December, 2009 Guide RC190 provides information and forms to make a claim for the tuition, education, and textbook tax credits for post secondary education outside Canada.

EMPLOYMENT INCOME

89(2)

TRAVEL EXPENSES

In a September 9, 2009 Tax Court of Canada case, the teacher claimed motor vehicle employment expenses of \$5,272 in 2005 while employed as a substitute teacher with Catholic and Public School Boards in Peterborough. He travelled to various schools throughout the districts in that year.

The taxpayer received a Form T2200 from the Catholic School Board, but not from the Public School Board.

Taxpayer Wins - Sort Of!

The Court found that the Catholic School Board travel expenses were tax deductible on the basis that he was required to work away from the employer's place of business, and did not receive an allowance, and did receive a Form T2200 - Declaration of Conditions of Employment.

However, the expenses related to the Public School Board were not deductible because the Public School Board did not provide a Form T2200.

SCHOLARSHIP/FREE TUITION

In a September 1, 2009 External Technical Interpretation, CRA notes that as a result of several recent Court Decisions, CRA now accepts that where an arm's length employer provides a post-secondary scholarship, bursary or free tuition to family members of an employee under a scholarship program, the amount will be included in the student's income, not the employee's income.

If the student is eligible to claim the education tax credit (post-secondary education) the entire amount may be exempt from tax.

With respect to employer-paid training or educational assistance for arm's length employees, CRA states that when the training is taken primarily for the benefit of the employer, there is no taxable benefit whether or not this training leads to a degree, diploma or certificate.

When an employee must resume his/her employment for a reasonable period of time after completion of the courses, CRA generally considers

that the employer is primarily the one to benefit and, therefore, the amounts are non-taxable to the employee.

BUSINESS/PROPERTY INCOME

89(3)

GENERAL PURPOSE COMPUTER EQUIPMENT

A 100% Capital Cost Allowance ("CCA") deduction rate applies to certain general-purpose computer equipment, including related system software and ancillary data processing equipment, that:

- is acquired after January 27, 2009 and before February, 2011;
- is situated in Canada; and
- is acquired for the purpose of earning income in Canada.

In addition, the property must be new. An example of ancillary data processing equipment is a printer that is connected to a general-purpose computer such as a desktop or laptop.

Also, in a July 13, 2009 External Technical Interpretation, CRA notes that a restaurant point of sale computer system generally qualifies.

TAX-DEDUCTIBLE INTEREST EXPENSE

A procedure of selling non-registered securities, using the proceeds to pay off a personal debt, and then re-borrowing to purchase securities may create tax deductible interest on the new debt.

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This conversion of non-tax deductible interest into tax deductible interest has complexities which may require professional assistance.

BONUSES PAYABLE AND PAYROLL REMITTANCES

It is sometimes difficult to remember to make appropriate and timely source deductions for remuneration received from your corporation. However, failure to do so can carry significant costs.

Also, any remuneration not paid within 179 days of the end of the fiscal year in which it was accrued is non-deductible until is paid.

The best answer is to ensure that the source deductions are remitted on a schedule that demonstrates full payment of the bonus within 179 days of the fiscal year end.

OWNER-MANAGER REMUNERATION

89(4)

DIRECTOR LIABILITY

Under the Income Tax Act, where a corporation has failed to remit source deductions or GST/HST, the directors at that time may be jointly and severally liable to pay that amount plus any interest or penalties to CRA.

However, a director is not liable where the director exercises the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

In addition, no CRA action may be made against the director if more than two years has expired after the director last ceased to be a director of that corporation.

MANAGEMENT FEES

In a June 30, 2009 Tax Court of Canada case, \$80,000 in management fees paid by the Appellant to a related company were considered not to be deductible on the basis they were not incurred to earn income from a business and were not reasonable.

The Court noted that the lack of any written or verbal agreement stating the terms and conditions of the services to be provided to the Appellant and the absence of the formalities required to create real legal obligations between the companies lead to the disallowed deduction.

MARRIAGE BREAKDOWN

89(5)

DISCLOSURE OF ASSETS

In a breakdown of a marriage where one of the spouses is a beneficiary of a discretionary family trust, the details of the Trust interest may have to be disclosed to the other spouse. This obligation may override the Trust's claim of privacy and confidentiality.

In one example, a discretionary family trust, in which a daughter is a beneficiary, acquired a class of shares in the family corporation.

Upon the divorce of the daughter, the parent Trustees have been in a battle with the other spouse with respect to the disclosure of the Trust assets, including the family corporation shares.

ARREARS

In an October 14, 2009 Tax Court of Canada case, the issue was whether a payment for spousal support arrears is deductible to the payor and taxable to the recipient.

The Court noted that a payment of spousal support arrears, whether in a lump sum or over time, generally continues to be deductible.

However, the result is different if the payment is not simply a payment of arrears. A recent example of this is where the taxpayer agreed to make a payment of \$100,000 at a time when there were arrears in the amount of \$370,000. The Court concluded that the lump sum amount was paid to obtain a release from the liability to pay the arrears and that the character and the nature of the payment were, therefore, altered.

Whether a payment retains its character as a payment of arrears or something else is largely a factual question that depends on the circumstances.

CHANGE OF RELATIONSHIP STATUS

The end of a marriage or a common-law relationship has significant income tax effects including support calculations, and property settlements, in some cases.

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It is fairly easy to determine when a legal marriage ends – the date of the divorce decree is stated in the legal documentation. The end of a common-law relationship can be more difficult to determine, or to plan around.

For income tax purposes, a common-law relationship comes into existence when two individuals cohabit in a conjugal relationship and either have a child together or have cohabitated for at least a year. The relationship is deemed to continue thereafter unless they were living separate and apart at the particular time for a period of at least 90 days because of a breakdown in their conjugal relationship. Common-law partners are, therefore, effectively “divorced” on the 91st day after a separation.

Also, when a relationship changes, individual income becomes relevant for determining eligibility for such programs as the GST Credit and the Child Tax Benefit instead of family income. Depending on the couple’s relative incomes, this could significantly enhance the entitlement to program payments.

The above definition of common law status, like many other income tax definitions, applies only for income tax purposes. Different statutes apply different definitions, often under provincial rather than federal law.

PENSION BENEFITS

In a November 20, 2009 External Technical Interpretation, CRA notes that if a division of the pension rights occurs and each spouse has a

proprietary interest in the pension benefits and is legally entitled to a portion of the pension income, each spouse is required to include in income their respective share of the pension benefits.

This applies whether pension benefits are received by separate cheques to each or by one cheque to the pension plan member with a distribution of half to the former spouse.

ESTATE PLANNING

89(6)

REGISTERED DISABILITY SAVINGS PLAN (“RDSP”)

An RDSP is a Trust arrangement to which contributions (up to \$200,000) can be made for the benefit of an individual who qualifies for the Disability Tax Credit (“DTC”) and is under age 59.

In addition, amounts are paid by the Government into an RDSP including grants (up to \$70,000) and bonds (up to \$20,000) under The Canada Disability Savings Act (“CDSA”) and the Canada Disability Savings Regulations (“CDSR”).

(For information search “RDSP” @ www.cra.gc.ca)

TAX-FREE SAVINGS ACCOUNTS (“TFSA”)

TFSA’s have been available since January 1, 2009 at \$5,000 per year. Income earned in these plans is non-taxable. (For more information search “TFSA” @ www.cra.gc.ca)

Generally, an individual’s TFSA will lose its tax-exempt status upon death. However, if a spouse or common-law partner is the “successor account holder”, the account will maintain its tax-exempt status.

Even though TFSA’s provide for the designation of a spouse or common-law partner as the “successor account holder”, many financial institutions did not provide this on the initial application forms in early 2009. Today, every person can name the spouse or common-law partner as a “successor account holder” for their TFSA to obtain the rollover treatment on death. Therefore, persons that acquired TFSA’s earlier in 2009 should consider going back to the financial institution and complete the required Forms.

ACQUIRING A MORTGAGE IN AN RRSP

A benefit of acquiring a person’s mortgage in an RRSP is that the bank may charge, say, a 4% interest rate on a five-year mortgage while only paying 1% on guaranteed investment certificates. This spread of 3% could be saved if a self-directed RRSP purchases the person’s mortgage as an eligible investment with, say, a 4% rate of return. On a \$50,000 investment, the benefit would be \$1,500 per year.

For example, a taxpayer could acquire their own mortgage, or a child’s mortgage, in an RRSP but they must first open a self-directed RRSP. Costs include mortgage appraisal fees, legal fees, mortgage insurance under Canada Mortgage

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and Housing Corporation, annual mortgage administration fees, and annual self-directed RRSP fees. Also, an approved lender from the National Housing Act must administer the mortgage and there may be additional costs in paying off a current mortgage.

Specific professional assistance may be needed.

REGISTERED RETIREMENT SAVING PLAN (“RRSP”) OVER-CONTRIBUTION

Where an individual has contributed a “cumulative excess amount” in respect of an RRSP, the individual must pay a tax equal to 1% of that excess per month. Therefore, eligible contribution amounts should be reviewed before making an RRSP contribution.

DONATION PROGRAMS

In a November 12, 2009 Tax Court of Canada case, the issue was whether the taxpayer was entitled to a charitable donation tax credit in respect of a \$100,000 payment made under an arrangement known as the 2001 Donation Program for Medical Science and Technology (The Program) marketed by Trinity Capital Corporation (Trinity).

The Program involved “leveraged donations”.

For example, based on a pledge of \$100,000, the Trinity Program would require a payment of \$20,000 to Trinity, an agreement to borrow, on a non-interest bearing basis, \$80,000 from a wholly-owned subsidiary of Trinity (Capital Ltd.), and an

additional payment of \$10,000 to Capital Ltd. as security for a loan, a fee for arranging the loan, and a premium in respect of an insurance policy.

Taxpayer Loses

The Court noted that it is clear that the Appellant did not make a “gift” to the Foundation because a significant benefit flowed to the Appellant in return for the Donation. Therefore, the entire donation tax credit was disallowed.

NON-PROFIT ORGANIZATION (“NPO”) - EARNING A PROFIT

In a November 5, 2009 External Technical Interpretation, CRA notes that a NPO may only earn a profit if it is incidental and generally unanticipated.

A NPO must be organized and operated “exclusively” for “any other purpose except profit”, to be exempt from tax.

TEN-YEAR GIFT

In a December 4, 2009 CRA Release, CRA notes that receiving gifts with a ten-year direction can be a useful way for a registered charity to accumulate a capital fund, with the intention, for example, of using only the interest income to carry out its activities. The charity must ensure that each ten-year gift it receives is tracked separately.

A written direction must accompany the gift. The direction must be signed and dated by the donor at the time the gift is made.

Example

I hereby give \$... to ABC Charity with the specific instructions that this gift, or any property substituted for it, be held by ABC Charity for a period of not less than ten years.

Signature of Donor

Date

DID YOU KNOW...

89(7)

TAXATION OF OLYMPIC PRIZES

In a June 26, 2009 Technical Interpretation, CRA notes that prizes awarded to an athlete for winning at the Olympic Games (other than the medals) are taxable. This also applies to the prize money that the Canadian Olympic Committee pays to Canadian athletes who win medals at the Games.

However, an amateur athlete who is a member of a registered Canadian Amateur Athletic Association and eligible to compete in International sporting events will be able to defer paying tax on this income.

FEDERAL GOVERNMENT EMPLOYEE - CONTACT INFORMATION

You can search for an employee within the Federal Government by visiting the Government Electronic Directory Services. It lists the names, titles, telephone numbers, fax numbers and mailing addresses of departmental employees.

<http://sage-geds.tpsgc-pwgsc.gc.ca>

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TAX EVASION

In December, 2009, National Revenue Minister Jean-Pierre Blackburn said that 90 people have voluntarily disclosed their Swiss Bank UBS accounts to Ottawa. The

government has reached deals with 44 of them raising an extra \$15.3 million in tax revenue in the process. CRA is still discussing with UBS and other authorities to try to obtain a list of Canadians who have accounts in tax havens abroad.

As of December 2, 2009, 6,798 Canadians have made voluntary disclosures to CRA since January 1, 2009 disclosing \$1.66 billion of assets.

An online version of this Newsletter/Article and other information on McGovern, Hurley, Cunningham, LLP can also be accessed on the internet at www.mhc-ca.com
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