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YEAR-END TAX PLANNING

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Some 2010 year-end tax planning tips include:

1. Certain expenditures made by individuals by December 31, 2010 will be eligible for 2010 tax deductions or credits including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union, professional, or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness amounts.
2. You have until March 1, 2011 to make tax deductible Registered Retirement Savings Plan ("RRSP") contributions for the 2010 year.

Consider contributing to a spousal RRSP to achieve income splitting in the future.

3. If you own a business, consider paying a reasonable salary to family members for services rendered to the business.

4. An individual whose 2010 net income exceeds \$66,733 will lose all, or part, of their old age security.

Senior citizens will begin to lose their income tax age credit if net income exceeds \$32,506.

Contact your professional advisors for assistance in managing 2010 personal income.

5. Consider purchasing assets eligible for capital cost allowance before the year-end.

6. Consider selling capital properties with an underlying capital loss prior to the year-end if you had taxable capital gains in the year, or any of the preceding three years. This capital loss may be offset against the capital gains.

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7. Registered Education Savings Plan ("RESP")

A Canada Education Savings Grant ("COGS") for RESP contributions will be permitted equal to 20% of annual contributions for children (maximum \$500 per child per year).

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8. Health and dental premiums for the self-employed.

Individuals will be allowed to deduct amounts payable for Private Health Service Plan coverage in computing business income provided they meet certain criteria.

9. A refund of Employment Insurance paid for non-arm's length employees may be available upon application to CRA.

10. Taxpayers that receive "eligible" dividends from private and public corporations may have a significantly lower tax rate on the dividends. Notification from the corporation to the shareholder is required.

11. Eligible public transit passes will be entitled to a tax credit.

12. A tax credit for children under 16 enrolled in certain organized activities is available.

13. A Registered Disability Savings Plan may be established for a person who is eligible for the Disability Tax Credit. Non-deductible contributions to a lifetime maximum of \$200,000 are permitted which are eligible for tax-deferred grants and bonds. Please contact your professional advisors for details.

14. If required income or forms have not been reported in the past to CRA, a Voluntary Disclosure to CRA may be available to avoid penalties. Contact us for details.

2010 REMUNERATION

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Some general guidelines to follow in remunerating the owner of a Canadian-controlled private corporation earning "active business income" include:

1. Bonusing down active business earnings in excess of the annual business limit may reduce the overall tax. However, leaving corporate active business income over this amount presents a tax deferral.

Professional advice is needed in this area.

2. Notification must be made to the shareholders when an "eligible" dividend is paid - usually in the form of a letter dated on the date of the dividend declaration. If all shareholders are directors, the notification may be made in the directors' minutes.

Please contact your professional advisor for advice before paying an eligible or ineligible dividend.

3. Elect to pay out tax-free "capital dividend account" dividends.

4. Consider paying dividends to obtain a refund of "refundable dividend tax on hand".

5. Corporate earnings in excess of personal requirements could be left in the company to obtain a tax deferral. The effect on the "Qualified Small Business Corporation" status should be reviewed before selling the shares.

6. Dividend income, as opposed to salaries, will reduce an individual's cumulative net investment loss balance thereby providing greater access to the capital gain exemption.

7. Excessive personal income affects receipts subject to clawbacks, such as old age security, the age credit, child tax benefits, and GST/HST credits.

8. Salary payments require source deductions to be remitted to CRA on a timely basis.

9. Individuals that wish to contribute to the Canada Pension Plan or a Registered Retirement Savings Plan may require a salary to create "earned income".

10. Salaries paid to family members must be reasonable.

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PERSONAL TAX RETURNS

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TUITION AND EDUCATION CREDITS - SCHOLARSHIP

CRA notes that the Income Tax Act expands the scholarship exemption so that most scholarships and bursaries received by students are exempt from income tax subject to certain criteria.

Also, tuition, education and textbook tax credits are available to students enrolled at a “designated educational institution” in a “qualifying educational program”.

MEDICAL EXPENSES - COSMETIC PROCEDURES

In a June 16, 2010 Technical Interpretation, CRA notes that the 2010 Budget precludes the medical credits for expenses incurred after March 4, 2010 for purely cosmetic purposes, including any related services and other expenses such as travel. Both surgical and non-surgical procedures for enhancing one’s appearance will be ineligible. However, an expense will continue to qualify as a medical expense if it is required for medical or reconstructive purposes, such as surgery to address a deformity related to a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

Editor’s Comment

Also, GST/HST may apply to the ineligible cosmetic expenses.

MEDICAL EXPENSE - WEIGHT-LOSS CLINIC

In a June 25, 2010 Technical Interpretation, CRA notes that fees paid to a weight-loss clinic by an individual in respect of a weight-loss program for the treatment of obesity would qualify as a medical expense where the services are provided by a medical practitioner who is authorized to act as such in the province in which the services are rendered.

DISABILITY TAX CREDIT (“DTC”) - PRIOR YEARS

In a June 7, 2010 Technical Interpretation, CRA notes that there is no provision in the Income Tax Act that precludes an individual from requesting to have a prior year tax return reassessed for the DTC where the certificate was signed in one year certifying that the impairment started in an earlier year.

EMPLOYMENT INCOME

92(4)

EMPLOYEE VS. INDEPENDENT CONTRACTOR

In a June 22, 2010 Tax Court of Canada case, the Appellant was found to be engaging the truck driver in insurable/pensionable employment income, not as an independent

contractor.

The Court noted that factors which suggest that the trucker was an employee of the Appellant include:

1. Tools/equipment - The Appellant provided all the tools and equipment, including the truck.
2. Chance of profit/risk of loss - The trucker had no expenses and no liability exposing him to a risk of loss. There was no opportunity for him to increase his income.
3. Control - The trucker received instructions from the Appellant and reported to the Appellant on a daily basis for work assignments.

Also, in a June 30, 2010 Tax Court of Canada case, CRA took the position that the 43 incorporated and 53 unincorporated truck drivers were employees of the payer and subject to EI and CPP.

The Court concluded that the 43 incorporated truck drivers were independent contractors because the intent of the incorporated workers and the Appellant was that of being independent contractors.

However, based on the evidence presented, the Court found that the remaining 53 workers were employees.

Also, in a May 4, 2010 Tax Court of Canada case, the Court found that a

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professor at the University of British Columbia was engaged as an independent contractor not an employee and noted that the professor honoured the contract which defined the independent contractor status by becoming a GST Registrant, invoicing his time with GST and bidding on new contracts as existing contracts expired.

BUSINESS/PROPERTY INCOME

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EMPLOYMENT INSURANCE ACT (“EIA”)

In a September 25, 2008 Tax Court of Canada case, the Court concluded that the relationship between Brother and Sister, who each owned 30% of the Corporation, was such that the salary paid to them was not subject to EI under the EIA. (Individuals that control more than 40% of the voting shares are automatically exempt from EI.)

The EIA notes that insurable employment also does not include employment if the employer/employee are not dealing with each other at arm’s length. However, this requires that the terms and conditions of their employment are different from those of other arm’s length employees.

The Court noted that the Brother and Sister stated that they had a great deal of autonomy and freedom in carrying out their tasks. They both

assumed their responsibilities, knowing very well that they did not need to obtain any approval. Decisions were made during dinners at their mother’s home or at other locations.

The Court concluded that the familial aspect of the business had a marked influence on its operation to the point that some important decisions were made based on the familial connection rather than on the economic reality of the business. The Brother and Sister also received a salary that was different and not comparable in terms of hours worked to other employees. They both received generous bonuses when the business was flourishing.

GENERAL PURPOSE ELECTRONIC DATA PROCESSING EQUIPMENT (“GPEDPE”)

GPEDPE (computers and ancillary equipment) are eligible for a 100% tax deduction in the year if acquired after January 27, 2009 and before February, 2011.

Keep this January 31, 2011 deadline in mind.

OWNER-MANAGER REMUNERATION

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NATIONAL JOINT COUNCIL**TRAVEL DIRECTIVES**

Owner-managers are often looking for objective, reasonable travel allowances to pay themselves, and employees, so as to reduce or avoid disputes with CRA. The kilometric rates paid by the Government of Canada for privately owned vehicles driven on authorized government business and for private non-commercial accommodation and meal allowances and incidental expenses are at www.njc-cnm.gc.ca/directive/index.php?sid=97&lang=eng (or Google National Joint Council Travel Directives).

For example, the total for meals and incidentals is \$85.20 per day - only 75% of this is paid from the thirty-first consecutive calendar day of travel status while at the same location when corporate residences and/or apartment hotels are available, or the traveler chooses to stay in private accommodations. The Territories have higher rates.

ESTATE PLANNING

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DONATED ARTWORK

In a November 23, 2009 Tax Court of Canada case, CRA successfully reduced the donation tax credit on artwork donated by the Appellants to a museum in 1999 and 2000 by successfully challenging the fair market value of the artwork.

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CLEARANCE CERTIFICATES

In a June 16, 2010 Technical Interpretation, CRA notes that where a legal representative distributes the deceased person's assets without first obtaining a Clearance Certificate, the Income Tax Act, the Employment Insurance Act, and the Excise Tax Act permit CRA to assess the representative personally for unpaid tax debts.

TRANSFERRING CAPITAL LOSSES BETWEEN SPOUSES

Typically, a loss must be claimed by the individual who owned the asset while it declined in value. However, CRA has confirmed that they accept transactions which transfer capital losses between spouses. This could be useful where one spouse owns appreciated assets, or has realized a capital gain, while the other has capital losses.

Careful planning is required to ensure all technical requirements are met. Please contact us for details.

In most cases that transfer must happen before the end of November if the loss is to be transferred in the current tax year.

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 To receive future newsletters via email, please send your request to info@mhc-ca.com

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