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YEAR-END TAX PLANNING

96 (1)

Some 2011 year-end tax planning tips include:

1. Certain expenditures made by individuals by December 31, 2011 will be eligible for 2011 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 and arts amounts.
2. You have until February 29, 2012 to make tax deductible Registered Retirement Savings Plan (RRSP) contributions for the 2011 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 2011 net income exceeds \$67,668 will lose all, or part, of his or her old age security.

Senior citizens will begin to lose their income tax age credit if net income exceeds \$32,961.

Contact your professional advisors for assistance in managing 2011 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.

IN THIS ISSUE

YEAR-END TAX PLANNING
2011 REMUNERATION
EMPLOYMENT INCOME
BUSINESS/PROPERTY INCOME
ESTATE PLANNING
WEB TIPS
GST/HST
DID YOU KNOW

7. Registered Education Savings Plan (RESP)

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

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

Tax Tips & Traps



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 at the beginning of the year, 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 the CRA, a Voluntary Disclosure to the CRA may be available to avoid penalties. Contact us for details.
15. U.S. Citizens and green card holders have U.S. filing obligations.

2011 REMUNERATION

96(2)

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.
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.

Professional advice is needed in this area.

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 the 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.

EMPLOYMENT INCOME

96(3)

CELLULAR PHONE ALLOWANCE

In a June 8, 2011 Technical Interpretation, CRA notes that CRA Guide T4130 provides that where an employer reimburses an employee for the cost of a cellular phone service plan and the primary use is

Tax Tips & Traps



for business purposes, the reimbursement would generally not be considered a taxable benefit if:

- the plan's cost is reasonable,
- the plan is a basic plan with a fixed cost, and
- the employee's personal use of the service does not result in charges that are more than the basic plan cost.

However, CRA notes that a taxable benefit may arise where additional charges are incurred as a result of the employee's personal use of air time minutes or personal long distance calls.

Also, when a reimbursement by an employer relates to an asset purchased and owned by an employee, a taxable benefit may apply.

AUTOMOBILE STANDBY CHARGE

In a July 12, 2011 Technical Interpretation, CRA notes that an automobile ceases to be subject to the automobile standby charge only when the employee is required by the employer to return both the automobile and its keys. Therefore, where an employee voluntarily surrenders the keys during a period of absence from work, CRA feels that those days must be counted in the calculation. (For calculation see CRA Form RC18)

PER DIEM ALLOWANCES

An employer may pay reasonable tax-free per diem allowances for

board and lodging to an employee while at a special worksite if the employee otherwise maintains a principal place of residence and is away for at least 36 hours and the distance was such that he/she could not reasonably return daily from the special worksite to the principal place of residence.

BUSINESS TRAVEL/LOG

In a November 3, 2010 Tax Court of Canada case, the taxpayer was a self-employed Remax residential real estate agent who received commissions of \$81,440 and \$79,552 in the 2005 and 2006 years.

The taxpayer did not keep a log of her business kilometres but she claimed that she had driven 31,185 kilometres and 23,693 kilometres in 2005 and 2006 for a business percentage of 95%.

CRA reassessed on the basis that only 55% of her kilometers were for business purposes.

The taxpayer appealed to the Tax Court of Canada and the Court noted:

1. That keeping a log book for automobile expenses is not specifically required by the ITA. However, by not doing so, she faces a heavier burden in proving that she used her motor vehicle almost exclusively for business purpose.
2. The Court understood that keeping a log book may be tedious and may not always be practical; however, it would be useful in determining the actual

business use.

4. The Court noted that if she did not have time to report all her business driving, which it seriously doubted, she could have reported her personal driving.

CRA countered with a proposal to allow 75% and the Court agreed.

Editor's Comment

See www.cra.gc.ca/whtsnw/lgbk-eng.html for CRA's comments on "Documenting the Use of a Vehicle".

BUSINESS/PROPERTY INCOME

96(4)

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

On June 25, 2011, CRA released "The SR&ED Technical Review: A Guide for Claimants - July 25, 2011". CRA notes that this outlines CRA's internal procedure manual, called the Claim Review Manual.

The two main aspects of a CRA technical review are to determine if the definition of SR&ED has been met and to resolve any issues associated with eligibility.

The Claim Review Manual is used by all CRA Research and Technology Advisors (RTAs) when they conduct the Technical Review of the SR&ED claims.

CRA notes that all SR&ED claims are risk assessed upon filing. Based

Tax Tips & Traps



on the risk assessment, some claims are accepted as filed, some are selected for a desk review, while others may be selected for a more detailed technical and/or financial review.

PARTNERSHIP INFORMATION RETURNS - T5013

On September 17, 2010, CRA announced that, effective for fiscal periods ending after December 31, 2010, a partnership that carries on a business in Canada must file a T5013 partnership Information Return where one of the following conditions are met:

- At the end of the fiscal period the revenues plus expenses are greater than \$2 million or the Partnership has more than \$5 million in assets.
- at any time during the fiscal period the Partnership was either in a tiered partnership, had a partner that was a corporation or a trust, invested in flow-through shares of a principal business corporation that incurred Canadian resource expenses and renounced these expenses to the Partnership or had received a written request from CRA to file a T5013 Information Return.

The due date for filing the T5013 return depends on the type of partners.

If, throughout the fiscal period, all partners are individuals (CRA considers a trust to be an individual),

the T5013 Form should be filed no later than March 31 after the calendar year in which the fiscal period of the Partnership ended.

If all partners are corporations throughout the fiscal period, the T5013 Return should be filed no later than 5 months after the end of the Partnership's fiscal period.

If any of the members of the Partnership are a combination of individuals (including Trusts) and corporations, and if the Partnership is not a tax shelter, file the T5013 Form no later than the earlier of:

- March 31 after the calendar year in which the fiscal period of the Partnership ended; or
- the day that is 5 months after the end of the Partnership's fiscal period.

ESTATE PLANNING

96(5)

CHARITIES

The 2011 Federal Budget proposed many changes to charities including:

1. Previously Registered Canadian Amateur Athletic Associations (RCAAs) were precluded from the rules that govern charities. The Budget ends that and compels RCAAs to comply with regulatory requirements including filing annual reports with the CRA. They will also have to follow specific rules for charities related to bookkeeping, tax receipts, and the value of the donated property. If they do not comply, they will face

sanctions.

2. Previously RCAAs were only required to promote amateur athletics as a "primary purpose". Therefore, they often engaged in other unrelated activities. Under the proposed changes, the promotion of amateur athletics must now be the "exclusive purpose" of RCAAs.

CHARITY TAX SCHEMES

It was noted in the August 24, 2011 issue of the Globe & Mail (page B8) that the CRA has reassessed more than 130,000 donors in charity tax schemes in the last year for more than \$4.5 billion. For example, it notes that the Burlington, Ontario based Parklane Financial Group Ltd. was promoting a charity tax scheme in which a donation receipt for \$10,000 would be provided for every \$2,500 of contribution.

In one example, Mr. D had made over \$75,000 in cash contributions which were totally disallowed and he now owes the CRA \$180,000 in taxes and interest. Mr. D is involved in a potential Class-Action Lawsuit in the Ontario Superior Court against the Plan's promoters. CRA noted that it has revoked the charitable status of participating charities.

CHANGES TO THE CANADA PENSION PLAN (CPP) FOR INDIVIDUALS WHO ARE AT LEAST 60 YEARS OF AGE BUT UNDER 70

In a July 14, 2011 Release, CRA discussed these CPP changes and notes that:

Tax Tips & Traps



1. As of January 1, 2012, the rules for contributing to the CPP will change.
2. Individuals under 65 years of age starting on January 1, 2012, will now have to contribute to the CPP if they are working, even though they may be receiving CPP.

Individuals at least 65 years of age but under 70, starting on January 1, 2012, will now have to contribute to the CPP if they are working, unless they elect to stop contributing to the CPP.

3. To stop contributing to the CPP:
 - Employee - an employee who is at least 65 years of age but under 70 and receiving a CPP or QPP retirement pension, can elect to stop contributing to the CPP by completing Form CPT30, giving a copy to all employers, and sending the original to the CRA.
 - Self-Employed - If you are self-employed, at least 65 years of age but under 70 and receiving a CPP or QPP retirement pension, you can elect to stop contributing to the CPP. To do so, complete the applicable section of Schedule 8, CPP Contributions on Self-Employment and Other Earnings for 2012 and file it with your income tax return for 2012.

Do not use Form CPT30.

The Election stays in effect until you turn 70 years of age or until you revoke the Election.

4. Individuals receiving both pensionable earnings and self-employed earnings who are at least 65 years of age but under 70 and receiving a CPP or QPP pension can elect to stop contributing to the CPP by completing Form CPT30, giving a copy to all your employers, and sending the original to the CRA.
5. If you want to start contributing to the CPP again, you need to revoke your Election to stop contributing to the CPP. However, you cannot revoke an Election in the same calendar year that you elected to stop contributing to the CPP. For example, if you elected to stop contributing to the CPP in 2012, you cannot revoke this election before 2013.

Since you cannot revoke an Election until 2013, Service Canada will provide information about this at a later date.

To get details, search for “changes to the Canada Pension Plan” on the CRA website.

Other changes that come into effect in 2012 include a person aged 60 or older will not have to cease working to qualify for early CPP. Also, the reduction to benefits when a person

collects CPP before age 65 and the increase in benefits for delaying the receipts past 65 will both be increased over the next several years.

OLD AGE SECURITY (OAS) APPLICATION

A taxpayer may apply to receive OAS payments at the age of 65. Failure to apply means a taxpayer could lose OAS payments because the Government only has to pay retroactive payments back to the 65th birthday for a maximum of 11 months, plus the month of application.

In a June 29, 2011 Federal Court case, the taxpayer argued that he was given incorrect information from Service Canada and, therefore, did not make an application for the OAS. Therefore, he was applying for retroactive payments past the 11 months.

Taxpayer Loses

The Court found that the information provided by Service Canada was not erroneous. Therefore, the taxpayer was limited to a retroactive payment of 11 months.

ECOENERGY RETROFIT-HOMES PROGRAM

The Federal Government renewed the ecoENERGY Retrofit-Homes Program in the 2011 Federal Budget. From June 6, 2011, until March 31, 2012, homeowners are eligible to receive grants of up to \$5,000 to make their homes more energy efficient.

There are two important changes to

Tax Tips & Traps



the Program. First, there is a requirement for participants to register directly with the Program before booking their evaluation. Second, homeowners will now be required to provide receipts to their energy advisor at the time of the post-retrofit evaluation to confirm eligibility for the grant.

Google ecoENERGY Retrofit-Homes for more information.

Only products purchased after June 6, 2011 and installed after a pre-retrofit evaluation are eligible for an ecoENERGY grant. All energy retrofits and post-retrofit evaluations must be completed by March 31, 2012. The homeowner must also sign the grant application by this date.

When you apply for ecoENERGY Retrofit-Homes, you may be eligible for complementary or matching funds from Provincial, Territorial and Municipal Governments, as well as from certain energy utilities and non-government organizations that use the EnerGuide Rating System. You should consult with these regional organizations directly to ensure you are meeting their respective guidelines and deadlines.

Google “complementary regional programs with ecoENERGY Retrofit-Homes”.

RRSP PLANNING

An individual must collapse his/her RRSP by December 31 of the year in which he/she turns 71. Because of the current low interest rates, most taxpayers chose to purchase a

Registered Retirement Income Fund (RRIF), rather than an annuity which would result in low interest rates throughout the person’s retirement years.

Usually, an arrangement is made with the financial institution to directly transfer the RRSP into a RRIF thereby avoiding the inclusion in income.

A RRIF requires that funds be withdrawn on an annual basis other than in the year the RRSP is converted to the RRIF. A RRIF can be self-directed and may hold investments similar to those held by the RRSP. The minimum withdrawals range from 7.38% at age 71 to, say, 8.99% by 81 to 14.73% by 91, and 20% by 90 and older. These rates increase each year.

An individual may use either their own age or that of their spouse in determining the minimum withdrawal amounts. The advantage of using the age of a younger spouse will be to extend the period that the funds remain in the RRIF earning tax sheltered interest.

When a taxpayer dies owning an RRIF, there will be a rollover if a spouse is the “successor annuitant” and will continue to receive the monthly RRIF payments.

However, if the RRIF goes to the Estate and the spouse is the beneficiary, the spouse will receive the funds in the RRIF at the time of death; however, these may be transferred tax-free to the spouse’s RRIF. Also, the RRIF may be transferred to a spouse’s RRSP if the

spouse is under the age of 72.

Where there is no spouse, and the beneficiary is a dependent child or grandchild, the funds may be taxable to the child; however, the child may purchase an annuity that must expire by age 18. If the child is dependent under a mental or physical infirmity, an annuity may be purchased that does not have to end by age 18.

Otherwise, the amounts in the RRIF are taxable in the deceased’s estate on the final tax return.

WEB TIPS

96(6)

GOVERNMENT SERVICES AND PROCEDURES AFTER BIRTH

<http://www.servicecanada.gc.ca/eng/1ifeevents/baby.shtml>

This website offers a helpful checklist and description of the items to consider and government services that should be registered for after you welcome a new one to the family. Topics include: parental leave/EI, registering the baby’s birth, RESPs, Canada Child Tax Benefit, Universal Child Care Benefit, and many more.

GST/HST

96(7)

ALLOWANCES AND REIMBURSEMENTS

Where a registrant pays an allowance to an employee or partner for supplies, the registrant may be entitled to a GST/HST Input Tax

Tax Tips & Traps



Credit (ITC). For example, in a GST province, the Input Tax Credit (ITC) would be based on 5/105 of the amount paid. In HST provinces, the amount would be based on 12/112, 13/113 or 15/115, depending on the particular HST rate in that province.

A taxpayer may also claim ITCs for GST/HST on reimbursements paid to employees for expenses incurred in Canada either on the Actual Method or the Factor Method.

The Actual Method permits the claim based on the actual GST/HST. The Factor Method may be used if the GST/HST was charged on 90% or more of the total amount reimbursed for expenses. The main advantage is that the documentary requirements are lessened.

With respect to reimbursements, the Factor for GST only is 4/104, or

11/111 (British Columbia), or 14/114 (Nova Scotia), or 12/112 in Ontario, New Brunswick and Newfoundland.

DID YOU KNOW

96(8)

UNIVERSAL CHILD CARE BENEFIT (UCCB)

A parent may deposit the UCCB receipts in a bank account for the child such that the investment income is reported by the child, not the parents, for income tax purposes.

The UCCB pays the parent \$100 per month for each child under the age of 6. Also, the attribution rules will not apply to investments made using the Canada Child Tax Benefit which is paid to certain low-income families depending on the family's income and the amount of the children, if the

amounts are deposited in a bank account for the child.

The deposit should be made using the child's Social Insurance Number.

BRITISH COLUMBIA (B.C.)

B.C. will reinstate the combined 12% PST and GST tax system following the Referendum decision to extinguish the HST in B.C. The PST will be reinstated at 7% with all permanent PST exemptions. The province may make some administrative improvements to streamline the PST.

The transition period is expected to take a minimum of 18 months consistent with the report of the independent panel on the HST.

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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