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JUNE 2008

PERSONAL TAX 2008

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 *child care 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 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.

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.

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

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 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

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

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 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.

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 reducing and deferring of tax through *carrying charges* and various *tax credits*. It also discusses the implications upon *leaving Canada*.

FARMING

CRA GUIDE

Farming Income and the *Agri-Stability* and



AgriInvest Programs Harmonized Guide, 2007.

CRA notes that the following programs *replace* the former Canadian Agricultural Income Stabilization (*CAIS*) Program for 2007 and subsequent years.

- (i) *AgriInvest* - savings accounts for producers that provide flexible coverage for *small income declines*.
- (ii) *AgriStability* - a *margin-based program* that provides income support when a producer experiences larger income losses. Payments are based on a decline in the current year margin compared to an average historical margin.
- (iii) *AgriInsurance* - includes existing crop insurance, production insurance, and other products and will expand to include other commodities.
- (iv) *AgriRecovery* - a disaster relief framework to provide assistance when small and medium-size *disasters* hit producers, to fill gaps not covered by existing government programs.

RC4408 is for farmers in British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Yukon.

CRA also released 71-page *Guide RC4060* which includes similar information but is for farmers in Alberta, Ontario and Prince Edward Island.

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

Farmers may be eligible for *SR&ED investment tax credits* and, where applicable, provincial research tax credits.

For example, a *hog farmer* may qualify for *research* with respect to breeding, genetics, nutrition, feed systems, custom equipment, and energy.

WEB TIPS

PROGRAMS AND BENEFITS FOR THOSE WITH DISABILITIES

Looking for *programs* for those with *Disabilities*?



Programs and benefits available for those with disabilities can be found by going to the website, www.canadabenefits.gc.ca. This Government of Canada website lists numerous *provincial and federal programs* and can be *searched* according to alphabetical order, program popularity, and programs provided by federal or provincial governments.

A *brief description* of each program is provided, along with eligibility criterion, application information and

forms, and pertinent financial, tax slip, and contact information.

Programs such as the Opportunities Fund for Persons with Disabilities and the Canada Pension Plan Disability Benefits, both federal programs, and the Property Tax Deferment Program (British Columbia), and Veterans Disability Program (Ontario) are examples of the many programs outlined.



This website also lists *programs and benefits* available to other populations such as *parents, students, seniors* and *Aboriginal Peoples*.

GST/HST

NEW HOUSING REBATE

“*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 *GST included* and net of the new housing rebate.

AGRICULTURE AND FISHING

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...

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*.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a commentary such as this, a further review should be done. Every effort has been made to ensure the accuracy of the information contained in this commentary. However, because of the nature of the subject, no person or firm involved in the distribution or preparation of this commentary accepts any liability for its contents or use.