



Tax Tips, Traps

...and other financial facts

June/July 2011



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IN OUR COMMUNITY

Willsey Davis & Co. Sponsors First Ever Odyssey Sunrise Golf Tournament

We are very excited to be a Platinum Sponsor of the first ever Odyssey Sunrise Golf Tournament. The tournament will be held on June 10 at the Grande Prairie Golf & Country Club.

Visit: <http://odysseysunrisegolf.ca>

We're also pleased to support these other community events this summer:

- College Classic Golf Tournament
- Troy Drysdale Memorial Golf Tournament. The event raises funds for the Troy Drysdale Emergency Services Bursary to support students pursuing an education in emergency services.

Visit: http://remsfoundation.org/programs/troy_drysdale_bursary/

PERSONAL TAXES

CRA Letter Initiative

CRA will be conducting a Letter Campaign in 2011. Two types of letters will be sent to Canadians across the country. Some will receive a letter providing information about the eligibility criteria of certain deductions they have claimed on their recent income tax returns. Others will receive a letter with the same information; however, it will also inform them that their income tax returns may be selected for audit.

This is the same as the Letter Campaign that was commenced in early 2010. In 2010 the Letter Campaign involved sending 37,000 letters to Canadians.

As part of this second year of its Campaign, CRA will send 29,000 letters similar to those sent in 2010. CRA notes that the letter does not mean that the tax returns were incorrect. CRA requests that if the return was not correct that a T1-ADJ be submitted to CRA. CRA notes that the letter recipients were chosen at random.

For a series of questions and answers on this, see www.cra-arc.gc.ca/whtsnw/tms/ltrcmpgn-eng.html

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BUSINESS PROPERTY INCOME

Salary to a Spouse

In a March 14, 2011 Tax Court of Canada case, the issue was whether CRA was correct in denying the Appellant's deduction for a salary to his spouse against his Proprietorship income in 2005 of \$9,200.

Taxpayer Wins!

The Court noted that:

1. In 2005 the Appellant needed additional help in his Proprietorship and he retained his spouse who has a Bachelor of Science Degree from the University of Windsor in Honours Electrical Engineering/Computer Option.
2. The Appellant stated that his spouse supervised the installation and implementation and debugging of a particular hardware at the customer's site. The project lasted for about four months.
3. The Court concluded that it was more likely than not that the taxpayer did retain services of his spouse in 2005 and that she earned the \$9,200 paid for those services.

OWNER-MANAGER REMUNERATION

Director Liability for GST/HST

In a February 8, 2011 Tax Court of Canada case, the taxpayer was a director of a corporation that had not remitted its GST. Therefore, he was personally liable, and paid \$57,202 and incurred legal fees of \$3,196 in defending himself.

Taxpayer Loses!

The Court found that the payment for the GST on behalf of the company was not a deductible expense. The legal expenses were also not deductible. Legal fees paid in relation to an Objection or Appeal under the Excise Tax Act are not deductible, whereas legal fees to object under the Income Tax Act are deductible.

However, legal fees to contest a GST Assessment may be deductible under ordinary business principles if the taxpayer is carrying on a business. In this case, he was not. Therefore the legal fees with respect to the GST were not deductible in computing business income.

The payment for the director's liability is not deductible because it is not incurred to earn income.

Legal fees with respect to GST may also be deductible as an amount paid in making a representation relating to a business carried on by the taxpayer. However, in this case, the taxpayer was not carrying on a business.

Employment Insurance (EI)

In a January 20, 2011 Tax Court of Canada case, CRA took the position that the salary paid to Dion (the son of the shareholders of the corporation) was subject to EI on the basis that his terms and conditions of employment were roughly similar to those that would have occurred if there was an arm's-length relationship.

Taxpayer Wins!

The Court noted that the exception for EI under the Employment Insurance Act was met on the basis that:

1. Dion had much more freedom with regard to working hours than an arm's-length shop supervisor would have had.
2. He was paid for periods during which he took off and he provided substantial assistance for questions related to the operations of the company.
3. Even if nothing is cast in concrete, Dion and his parents had agreed that in a few years he would purchase the company from his parents when they retired.
4. It would not be reasonable to conclude that the terms of employment were roughly similar to those that would have occurred if there was an arm's-length situation.
5. It was clear that his relationship with the company was very different from what CRA had assumed.

Editor's Comment

It is important on the initial enquiry by CRA that the proper information is provided to CRA so that they may make a proper decision without the taxpayer having to file an Appeal to the Tax Court before receiving an equitable result.



ESTATE PLANNING

First-Time Home Buyers

First-time homebuyers have a number of incentives including:

1. *Non-Refundable Tax Credit*

The Income Tax Act provides a non-refundable tax credit based on \$5,000 (at 15% = \$750) for "first-time homebuyers who acquire a qualifying home" after January 27, 2009.

An individual will be considered a "first-time homebuyer" if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the four preceding calendar years.

The credit is also available for certain acquisitions of a home for the benefit of an individual who is eligible for the disability tax credit.

Any unused portion of the tax credit may be claimed by the individual's spouse or common-law partner. Where more than one individual is entitled to the tax credit (for example, where two individuals jointly buy a home), only one credit is allowed.

2. *RRSP Homebuyers' Plan (HBP)*

This HBP permits each spouse to withdraw up to \$25,000 from his/her RRSP (\$50,000 per couple) if you or your spouse has not owned an owner-occupied home in the period beginning with the start of the fourth calendar year before the year in which you acquired the new home and ending thirty-one days before the acquisition of the new home. The 31 day rule allows a person to acquire the new home up to 30 days before the withdrawal. However, this condition is not applicable if the person is disabled or if you are purchasing a home for a disabled person.

The home must be purchased by October 1 of the year after the year the amount was withdrawn. You must intend to occupy the home as your principal residence within one year of acquiring it. However, once you live in the home as a principal residence, there is no minimum period of time that you have to live there.

You must repay the loan with a minimum of 1/15th per year for up to 15 years.

In a June 18, 2010 Technical Interpretation, CRA notes that a mobile home on leased land may be considered a "qualifying property" for purposes of the HBP, assuming all other conditions are met.

3. *Land Transfer Tax Exemption*

Some provinces (for example, Ontario and British Columbia) have a limited exemption for land transfer tax for first-time homebuyers.

Another thing to consider is that a parent or grandparent may make a non-interest bearing loan to a child, for example, to assist the child in acquiring a personal asset such as a residence or a car. This avoids the non-deductible interest expense to the child. As there is no income earned on these personal assets, the attribution rules are not applicable.

If the loan is not repaid at the time of the parent's death, the Will could forgive that part of the loan. The "debt forgiveness" rules in the Income Tax Act do not apply to a bequest or inheritance.

Also, a gift to an adult child does not trigger the attribution rules.

Tax Free Savings Accounts (TFSA)

In a January 11, 2011 CRA Newswire Release, CRA notes that if a person contributed to a TFSA \$5,000 in 2009, and only \$2,000 in 2010, then you could contribute \$8,000 in 2011. This includes the \$3,000 unused contribution room from 2010 plus \$5,000 for 2011.

In another example, CRA notes that if you contributed \$5,000 in both 2009 and 2010, and then withdrew \$10,000 in November 2010, your contribution room for 2011 would be \$15,000. This is calculated using your annual dollar limit of \$5,000 for 2011 plus the \$10,000 withdrawal made in 2010. Withdrawals are not added back to your contribution room until after the end of the year.

Caution! CRA also notes that if you have more than one TFSA, you can transfer funds directly from one of your TFSAs to another of your TFSAs without affecting your contribution room. The direct transfer must be completed by your financial institutions.

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However, if you withdraw funds on your own from one TFSA and contribute those same funds to another TFSA, the re-contribution will be considered to be a new contribution. As a result, your TFSA contribution room will be affected and you may be subject to a tax on excess contributions.

If your contributions in a year exceed your TFSA contribution room, you will be subject to the TFSA tax on excess contributions of 1% per month on your highest excess TFSA amount in each month. This tax will accumulate until the excess amount is withdrawn.

GST/HST

GST/HST Place of Supply Rules

Clients often ask which sales tax, GST or HST, will apply in a particular situation. To answer them, we look to the GST/HST “place of supply” rules. While these rules can get very complex, the best place to start is to look at the most basic rules for sales of goods and/or services.

For the sale of tangible personal property (“TPP”), the general rule is that a supply takes place in the province to which the vendor delivers the TPP, or where the vendor makes the TPP available to the purchaser.

If the vendor ships the TPP to a province on a common carrier that it has arranged itself, the destination province is the place of supply. But if the vendor ships the TPP to a province on a common carrier that the purchaser has arranged, the province where possession of the TPP is given to the common carrier is the place of supply.

Also, if a vendor sends the TPP via mail or courier to an address in a province, it is that province that is the place of supply.

This is why we often say that both GST and HST are “destination-based” taxes, and why it is important to determine that destination.

For a supply of a service, the general rule is that a supply takes place in the province noted in the customer’s address. In many ways, it will not matter where the service provider is located - the place of supply will be the province in the purchaser’s address.

Complexities arise if you have more than one address for a customer (such as a head office address as well as a branch office address), or if the service is performed in more than one province.

Keep in mind that the GST/HST place of supply rules are not integrated with provincial sales tax rules. It is possible that both GST/HST and PST can apply to some services!

Remember...these are the most basic “general” rules for sales of goods and supplies of services. There are many scenarios that will fall outside the general rules. For a detailed discussion of these, look to CRA’s Technical Information Bulletin B-103, *“Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province.”*

DID YOU KNOW?

Unclaimed OAS, GIS

In a February 9, 2011 Federal Tax Force Financial Literacy Report, the Tax Force noted that about 160,000 eligible seniors did not apply to receive Old Age Security, representing almost \$1 billion in benefits.

Another 150,000 eligible seniors did not apply to receive the Guaranteed Income Supplement.



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