QUON & ASSOCIATES

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R.M. (Bob) Amantea CMA
Cyndy L. Packard CA
Nhu Hoang RPA –Associate

Professional Accountants

Bay 1, 3700 - 19th Street N.E. Calgary, Alberta T2E 6V2 Phone: 403 250 5111 Fax: 403 291 0412
Email: service@quonassociates.com Website: www.quonassociates.com

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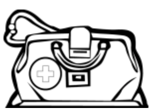
PERSONAL TAX

102(1)

MEDICAL EXPENSES - TRAVEL



In a November 8, 2012 ***Tax Court of Canada*** case, CRA disallowed as a medical expense $14,883 of ***travel costs*** related to 101 round trips that Mr. Jordan made from Weyburn to Regina to ***assist his wife in recovering*** from an aneurysm.

Taxpayer wins

The Court allowed the deductions on the basis that they were incurred while his wife was receiving medical treatment and, therefore, should ***not be restricted*** to just the initial trip from Weyburn to Regina.

DISABILITY TAX CREDIT

In a December 18, 2012 ***Tax Court of Canada*** case, the Court determined that the Appellant was ***not*** entitled to a ***Disability Tax Credit*** for the 2010 taxation year in respect of her diagnosis under ***Attention Deficit-Hyperactive Disorder*** and DSM-IV Learning Disability.

The Court noted that there is no doubt that the difficulties experienced by the Appellant are not insignificant, however, they are ***not sufficiently serious*** to meet the definition of ***mental or physical impairment*** required to claim the credit.

MOVING EXPENSES AND REIMBURSEMENTS

When taxpayers move, they commonly incur significant costs, many of which are deductible as ***moving expenses***, including:

- ***Transportation and storage*** costs (packing, hauling, in-transit storage and insurance) for possessions and household contents;
- Reasonable ***travelling costs*** (vehicle expenses, meals, accommodation) to move you and your family;
- ***Temporary living costs*** near the old or new location (meals, accommodation) for up to 15 days;
- ***Lease cancellation*** costs;
- Temporary home ***costs while trying to sell your vacant residence*** (interest, property taxes, insurance premiums, heat and utilities) after you have moved out to a maximum of $5,000;
- ***Transaction costs of selling*** of your old house (real estate commissions, advertising, legal fees, and mortgage penalties);
- ***Transaction costs of buying*** a new house (legal fees and ***land transfer taxes*** excluding GST/HST) if the old house is sold due to the move;
- Costs ***incidental to the move*** (connecting and disconnecting utilities, changing legal documents such as a driver's license or automobile registration).

Tax Tips & Traps

EMPLOYMENT INCOME

102(2)

TAXABLE BENEFIT - EMPLOYER PROVIDED MOTOR VEHICLES REQUIRED TO BE TAKEN HOME AT NIGHT

It was noted by the CRA in Income Tax Technical News No. 40 (June 11, 2009), that travel from ***home to the office*** for some ***employer provided motor vehicles*** may still be considered ***taxable benefits*** even if the vehicles are ***required to be taken home*** and prohibited from any other personal use.

It should be noted that when calculating the benefit, the use of these vehicles is ***not*** considered ***personal*** if the employee proceeds ***directly from home to a point of call*** or returns home from that point of call.

RENTAL OF TOOLS AND MOTOR VEHICLE

In a November 29, 2012 ***Technical Interpretation***, CRA indicates that they may consider ***rental payments*** made to an ***employee*** for the use of his or her vehicle and tools to be income from ***employment***, and not from property, on the basis that the payments are received by virtue of an ***employer/employee relationship***.

DOOR PRIZES

In a February 4, 2013 ***Technical Interpretation***, CRA was asked about ***door prizes*** received by attendees at a company social event where every attendee received a door prize.

CRA indicated that their tax-free $500 ***gifts and awards policy*** would apply to gifts received by the employee, the employee's spouse, and any other non-arm's length person.

The questioner suggested that ***gift cards*** may be given. CRA noted these ***near cash gifts*** would ***not*** be included under their ***gifts policy***. Therefore, the value would be ***taxable*** to the employees. CRA referred to the detailed discussion of their gifts and awards policy at ***www.cra.gc.ca/gifts***.

BUSINESS/PROPERTY INCOME

102(3)

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In an October 25, 2012 ***Tax Court of Canada*** case, the Court found that CRA had incorrectly denied SR&ED expenditures of $387,000 in 2008. CRA unsuccessfully argued that the company was ***only reproducing existing technology*** when it incurred expenses to develop a new Heating, Ventilation, and Air Conditioning system for multi-storey residential townhomes.

The Court found for the taxpayer on the basis that the Company had to make ***modifications*** to the system to make it work at the level ***necessary*** for commercial success.

This means that CRA will have to look at SR&ED ***claims in their entirety*** and **not** try and break them down into **component sections** as they have done in the past.

SALE OF FAMILY HOMES

In a September 6, 2012 ***Tax Court of Canada*** case, the taxpayer was a police officer who had ***three*** unreported sales of ***family homes*** built in 2004, 2005 and 2007 in which ***CRA assessed business income*** of $31,068, $44,729 and $29,872 and also assessed ***gross negligence penalties***.

For the three properties, the ownership period between the date of purchase of the land and the date ***listed for sale*** varied between 67 and 110 days.

Taxpayer loses

The Court found that these homes were acquired and built with the ***intention of selling*** and were, therefore, ***business income*** and, that there was ***gross negligence*** in not reporting the income.

2013 FEDERAL BUDGET

102(4)

Some of the provisions in the 2013 Federal Budget include:

First-Time Donor's Super Credit (FDSC)

Budget 2013 proposes a temporary FDSC providing an additional ***25-per-cent tax credit*** for ***a first-time donor*** on up to $1,000 of donations.

A first-time donor will be entitled to a 40-per-cent federal credit for donations of $200 or less, and a 54-per-cent federal credit for the remaining portion, not exceeding $1,000.

An individual will be considered a first-time donor if neither the individual nor the individual's spouse or common-law partner has claimed a Charitable Donation Tax Credit in any taxation year after 2007.

The FDSC will be available in respect of donations of cash made on or after Budget Day (***March 21, 2013***) and may be claimed only once in the 2013 through 2017 tax years.

Taxes in Dispute and Charitable Donation Tax Shelters

Budget 2013 proposes to allow the CRA to collect 50 per cent of the disputed tax, interest or penalties where an objection has been filed with regards to a disallowance of a deduction or tax credit claimed in respect of a ***tax shelter*** that involves a ***charitable donation***. Normally, collection action cannot be taken while amounts are under objection or appeal.

This measure will apply in respect of amounts assessed for the 2013 and subsequent taxation years.

Leveraged Insured Annuities (LIA) and 10/8 Arrangements

A ***LIA*** involves the use of borrowed funds in connection with a lifetime annuity and a life insurance policy, both of which are issued on the life of an individual.

A 10/8 Arrangement generally involves the borrowing of funds secured by a life insurance policy, or investment account under the policy, whereby the rates on the loan and the investment are tied to each other.

Budget 2013 proposes to eliminate unintended tax benefits by introducing rules for "***LIA policies***" and "***10/8 arrangements***".

Budget 2013 also proposes to alleviate the income tax consequences on a withdrawal, from a policy relating to a 10/8 arrangement, if the withdrawal is made before January 1, 2014.

Restricted Farm Losses (RFL)

Budget 2013 proposes to codify the ***chief source of income test*** whereby other income must be subordinate to farming in order for ***farming losses*** to be ***fully deductible*** against income from those other sources.

Budget 2013 also proposes to increase the RFL limit to $17,500 of deductible farm losses annually, being the first $2,500 loss plus half of the next $30,000.

These measures will apply to taxation years that end on or after Budget Day.

The Canada Job Grant

Businesses with a plan to train Canadians for an existing job or a better job will be eligible to apply for a Canada Job Grant. The Grant will provide access to a maximum $5,000 federal contribution per person towards training at eligible training institutions.

As there are various bodies involved, ***negotiations*** must still take place to finalize the detailed design of the Grant.

Extension and Expansion of the Hiring Credit for Small Business

Budget 2013 proposes to expand and extend for one year the temporary ***Hiring Credit for Small Business***. This credit would offset up to $1,000 of the increase in an employer's 2013 Employment Insurance (EI) premiums over those paid in 2012. Only employers with total EI premiums of $15,000 or less in 2012 qualify.

Stop International Tax Evasion Program

The CRA will ***pay rewards*** to individuals providing information on ***major international tax non-compliance*** to the CRA of up to 15 per cent of ***federal tax*** collected if reassessments exceed $100,000 in federal tax.

Canada – U.S. Information Exchange & FATCA

Budget 2013 confirms the Government is engaged in negotiations with the U.S. for an agreement to enhance reciprocal ***information exchange*** under the Canada – United States Tax Treaty.

The agreement would include information exchange provisions in support of the *United States Foreign Account Tax Compliance Act* provisions.

OWNER-MANAGER REMUNERATION

102(5)

DIRECTOR LIABILITY

In an October 16, 2012 ***Tax Court of Canada*** case, the issue was whether the Appellant, as a ***director*** of the corporation, was ***personally liable*** for the ***unremitted GST*** of $2,512.

Taxpayer wins

The Court noted that he had effectively ***lost control*** over the corporation's affairs.

It was also noted that the individual is not necessarily personally liable if external constraints (such as psychological, economic and social control) were such that a ***reasonable person*** who was a victim of the same control would have ***done nothing***.

ESTATE PLANNING

102(6)

ESTATE PLANNING

It is commonly advised that the RRSP/RRIF holder ***designate a beneficiary*** of the plan. Advantages of this approach include:

- The funds ***transfer directly***, ***avoiding probate***.
- The status as a "refund of premiums" requires ***no elections***. Refunds of premiums allow a tax-deferred transfer of funds.
- ***Reporting on*** transfers to a surviving spouse or common law partner can be avoided.
- The funds are ***not exposed to liabilities*** of the deceased's Estate.
- It avoids the ***risk*** that a beneficiary will ***not sign the election***, thereby requiring the Estate to pay tax on the account value or, that the opportunity is overlooked entirely by the Executor.

However, there may be advantages to ***leaving funds*** to the Estate itself, such as:

- Enhanced planning opportunities, as the elections can be used to ***determine the precise amounts*** to be reflected as a "***refund of premiums***", or reported on the terminal tax return.
- The elections can also be used to allow the Executors ***flexibility*** to determine how any "refund of premiums", and other assets, will be allocated between eligible beneficiaries. This could be used to direct the "refund of premiums" to lower income beneficiaries and/or beneficiaries best able to utilize rollovers while directing other assets to other beneficiaries.
- Funding a ***Testamentary Trust***. This may be especially desirable ***if no "refund of premiums"*** and/or ***rollovers*** are ***available*** (or if the plan holder does not want that amount of funds left to those beneficiaries).

Professional advice may be needed in this area.

DEFERRING OLD AGE SECURITY (OAS)

A person ***may defer*** receiving the OAS pension by not applying for it at age 65. The pension amount will be increased by ***.6% per month*** of deferral after your ***65th birthday*** or ***July 1, 2013***, and stays in effect until your 70th birthday.

It also appears that a person that turns 65 before July 1, 2013 could consider delaying the receipt of OAS payments for up to five years beyond the 65th birthday. However, the OAS increase of .6% per month will not commence until July 1, 2013.

WEB TIPS

102(7)

FINANCIAL CONSUMER AGENCY OF CANADA (FCAC)

The ***FCAC*** is an independent body working to empower Canadians to expand their ***consumer education*** in the ***financial sector***.

FCAC operates a website, www.fcac-acfc.gc.ca/eng/index-eng.asp, with a host of information on various financial products and services available in Canada such as mortgages, credit cards, insurance products, and other banking services.

Consumer education on the site comes in the form of ***toolkits and calculators***, ***written commentary***, ***pamphlets***, and ***questions and answers***, all of which are fairly simple to use and understand. The website also provides an area devoted to ***education about fraud***.

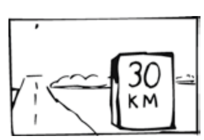
In addition, it provides direction for consumers on ***launching complaints*** against various federally regulated financial institutions and payment card network operators.

As the ***FCAC*** is an ***independent body***, information bias is reduced.

GST/HST

102(8)

INPUT TAX CREDITS (ITCs) - TRAVEL ALLOWANCES



In a January 17, 2013 ***Tax Court of Canada*** case, ITCs of $126,339 were claimed with regards to ***travel allowances*** paid to employed sales representatives for the ***estimated*** number of ***kilometers*** driven.

Taxpayer loses

The Tax Court noted that:

1. The ***allowances*** paid were based on an ***estimate*** of the kilometres ***to be travelled*** and ***not*** on the ***actual*** kilometres driven for business.
2. The Excise Tax Act (ETA) permits ITCs related to non-taxable allowances, however, the allowance must be based on the actual ***number of kilometres*** driven.
3. The ***requirements*** were ***not met***, and the ***ITCs*** were not allowed.

DID YOU KNOW

102(9)

CAYMAN ISLANDS

Effective ***September 1, 2012***, the Cayman Islands have introduced a new ***10% payroll*** levy on expatriates who earn more than ***$36,000*** a year. This would affect approximately 5,875 expatriates living and working in the Cayman Islands.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

Although every reasonable effort has been made to ensure the accuracy of the information contained in this newsletter, no individual or organization involved in either the preparation or distribution of this letter accepts any contractual, tortious, or any other form of liability for its contents.

For any questions… give us a call.