

2010 THIRD QUARTER

# Tax Tips & Traps

## PERSONAL TAX

### MEDICAL EXPENSES - COSMETIC PROCEDURES

The 2010 Federal Budget notes that purely cosmetic procedures are no longer eligible to be claimed as medical expense tax credits. This generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

### MEDICAL EXPENSE - WEIGHT LOSS PROGRAM

In a Technical Interpretation, CRA notes that fees charged for a weight loss program qualify as medical expenses if the services are diagnostic, therapeutic, or rehabilitative and are provided by medical practitioners. A "medical practitioner" is a person who is authorized by a province or other jurisdiction to act as a "medical practitioner".



### CAREGIVER CREDIT

The Income Tax Act (ITA) provides a caregiver federal tax credit of up to \$633 for 2010 (\$4,223 x 15%) plus a provincial tax credit for individuals residing with and providing in-home care to a parent or grandparent (including in-laws) 65 or over or an infirm dependent relative. The federal credit is reduced by 15 cents for each dollar of the dependant's net income over \$14,422 in 2010.

### UNIVERSITY OUTSIDE CANADA

The ITA also provides a tuition credit where the individual is a student in full-time attendance at a university outside Canada in a course leading to a degree.

### CHILD CARE EXPENSE (CCE) - PAYMENT TO YOUR SISTER

In a Technical Interpretation, CRA notes that where a taxpayer pays his sister (age 18 or over) to take care of his child while he is working, the amounts paid will likely be CCEs on the basis that they are only prohibited with respect to payments to the child's father or mother, a supporting person of the child, or a person who is under eighteen years of age and related to the taxpayer, or a person in respect of whom the taxpayer or supporting person has deducted a tax credit.

Disclaimer: This is not advice. Clients should not act solely on the basis of the material contained in this document. Items herein are general comments only and do not constitute or convey advice per se. We therefore recommend that formal advice be sought before action in any of the areas. This document is issued as a useful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our written prior approval.

## In this Issue

PERSONAL TAX	1
EMPLOYMENT INCOME	2
BUSINESS/PROPERTY INCOME	2
OWNER-MANAGER REMUNERATION	3
ESTATE PLANNING	3
INTERNATIONAL	4



## EMPLOYMENT INCOME

### EMPLOYEE BIRTHDAY GIFTS

In a Technical Interpretation, CRA notes that gifts to employees from employers of **up to \$500** are tax-free as long as they have not been given to non-arm's length employees and are not performance-related awards (e.g. sales targets) or cash and near-cash awards.



Birthday gifts of up to \$500 would qualify for the non-taxable amount. If the value of the gift is over \$500 then the excess would be taxable.

### SPORT FACILITY PAID BY THE EMPLOYER

In a Technical Interpretation, CRA notes that a benefit related to the payment or reimbursement of sports facility dues by an employer, must be included in the employee's income if the employee, not the employer, is the primary beneficiary.



### HOME PURCHASE LOAN

An employee may borrow funds from an employer to acquire a home, or to repay a loan or debt (refinance) that was received to acquire a home. There will be no taxable benefit as long as the interest charged by the employer is equal to the prescribed interest rate at the time the loan is taken out by the employee (currently 1% until at least September 30, 2010).

### PRIVATE HEALTH SERVICES PLAN (PHSP)

In a Technical Interpretation, CRA notes that an employer may deduct its contributions to a PHSP and the benefits received by employees will not be included in income.

A PHSP is a contract of insurance for expenses that would normally qualify as medical expenses. A Cost-Plus Plan can be considered a PHSP if it contains the basic elements mentioned above.

## BUSINESS/PROPERTY INCOME

### EMPLOYMENT INSURANCE BENEFITS FOR SELF-EMPLOYED PEOPLE

Self-employed persons will be able to enter into an agreement with Service Canada to access four types of special Employment Insurance (EI) benefits:

- maternity benefits;
- parental benefits;
- sickness benefits; and
- compassionate care benefits.

To enter into an agreement with Service Canada, you may register online using My Service Canada Account. If you enter into an agreement after April 1, 2010, you will have to wait twelve months before you will be able to make a claim for EI special benefits.





CHARTERED ACCOUNTANTS



FORGING STRONG RELATIONSHIPS.  
PROVIDING CLEAR BUSINESS ADVICE.

Self-employed persons also include persons that own more than 40% of the voting shares of a corporation and are, therefore, otherwise, exempt from participating in the Employment Insurance Program. Self-employed persons just pay the employee portion of EI premiums.

## OWNER-MANAGER REMUNERATION

### EMPLOYEE PROFIT SHARING PLAN (EPSP)

In an Employment Insurance (EI)/Canada Pension Plan (CPP) case, the Court found that payments made through an EPSP for the owner-manager were not subject to EI or CPP.

## ESTATE PLANNING

### NON-PROFIT ORGANIZATION (NPO) - FILING REQUIREMENTS

In a Technical Interpretation, CRA notes that NPOs may be corporations with share capital, corporations without share capital, or unincorporated entities. The filing requirements for these associations are similar to taxable organizations.

### TRANSFER OF CAPITAL LOSSES BETWEEN SPOUSES

In a Technical Interpretation, CRA confirmed that it still accepts the transfer of latent capital losses between spouses.

### HOME BUYERS PLAN (HBP)

In a Technical Interpretation, CRA notes that up to \$25,000 may be withdrawn from an individual's RRSP to buy or build a qualifying house (first-time buyer - a four-year test).

CRA also notes that if an individual buys a qualifying house with his/her spouse, they can each withdraw up to \$25,000 from their RRSPs for a combined amount of up to \$50,000. Under the HBP, the individual has to repay all withdrawals to his/her RRSP within fifteen years.

### RRSP/RESP/RRIF - QUALIFIED INVESTMENTS

In a Technical Interpretation, CRA notes that shares of small business corporations may be qualified investments provided that certain conditions are met including, immediately after the acquisition of the share, each person who is an annuitant, a beneficiary or a subscriber is not a connected shareholder (a 10% test).

### FAMILY TRUSTS

Recently CRA have been auditing Family Trusts. A Family Trust may be used to provide control of the assets to the Trustees rather than the beneficiaries, reduce probate fees by getting the assets out of the Estate, preventing the assets from being part of the public record in a death, and providing income splitting with family members. However, Family Trusts must be properly established and operated, hence the CRA audits.





CHARTERED ACCOUNTANTS



FORGING STRONG RELATIONSHIPS.  
PROVIDING CLEAR BUSINESS ADVICE.

### **TAX-FREE SAVINGS ACCOUNTS (TFSA) - OVER-CONTRIBUTIONS**

Taxpayers must be careful not to inadvertently subject themselves to TFSA penalties. For example, if a taxpayer put \$5,000 into Bank 1 in January, 2009 and withdrew that amount and then put \$5,000 into Bank 2 in February, 2009, the penalty is 1% per month (\$50 per month or \$600) because the taxpayer had excess contributions of \$5,000 for the twelve months. This is because the withdrawal does not get credited until the following year. If it is considered deliberate, there is an additional penalty of 100% of any income or gains resulting from the deliberate over-contribution.

### **CRA TFSA PENALTY RELIEF**

CRA announced that they will consider waiving the tax on excess TFSA contributions if the taxpayer genuinely misunderstood the operation of the rules. CRA sent out over 70,000 letters to persons who have technically had over-contributions in 2009.

If a taxpayer receives a Notice of Assessment, they may object or request a waiver of the taxes on excess contributions under Taxpayer Relief.

## **INTERNATIONAL**

### **MOVING TO THE UNITED STATES**

Canadians that become non-residents (including moving to the United States) are deemed to dispose of certain assets such as marketable securities, private company investments, or real property. (Departure Tax)

This deemed disposition can create double tax when an individual moves to the U.S. and then disposes of such assets in an actual transaction, because the cost basis of the assets under the U.S. rules is based on the original, historical cost.

However, an election related to the deemed disposition reduces the incidence of double taxation.

### **WITHHOLDING TAX**

In a Technical Interpretation, CRA notes that the requirement to withhold or deduct tax applies to payments for services rendered, or to be rendered, in Canada by a non-resident person. The Regulation includes payments to a non-resident person of a fee, commission or other amount in respect of services rendered in Canada, of any nature whatever.

### **TRANSFER PRICING**

CRA is auditing and assessing more cross-border transactions between related parties. Caution is needed in this area.

### **U.S. CITIZENS AND RESIDENTS**

There is a significant compliance burden to U.S. citizens and residents if they own Canadian (or other non-U.S.) mutual funds.

**For more information,  
contact:**

Dino Infanti, Tax Partner

T: 604.676.5932

E: [dinfanti@berrismangan.com](mailto:dinfanti@berrismangan.com)

[www.berrismangan.com](http://www.berrismangan.com)