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PERSONAL TAX

MEDICAL EXPENSES

In an October 27, 2010 **Technical Interpretation**, CRA notes that a **dock landing gate**, associated with the use of a **wheelchair**, is a **medical expense** as a **renovation or alteration** to a dwelling of the person who lacks normal physical development or has a severe and prolonged mobility impairment. However, to **qualify**, the expenditure should **not increase the value** of the dwelling and is **not** of a type that would **normally be incurred** by persons who have normal physical development.

Also, an **air purifier** purchased for a house because of the person's **asthma** and a **compromised immune system** may qualify as a **medical expense**.

MEDICAL AND DISABILITY RELATED INFORMATION

CRA Guide **RC4064** provides **medical and disability** related tax information for people with **medical expenses** or **impairments in physical or mental functions** and anyone **supporting** these people.

Also, if a person has a **permanent mobility impairment**, and cannot safely use public transportation, he/she may apply for a **refund** of part of the **Federal Excise Tax** on gasoline purchased. (Information Sheet XE8, page 24)

DISABILITY TAX CREDIT (DTC)

An individual who is **markedly restricted** in the basic activities of daily living, or **requires 14 or more hours** per week to administer **Life Sustaining Therapy**, may be eligible for the **DTC**.

For example, the **Canadian Diabetes Association** website (search: disability tax credit) notes that if a taxpayer or a child uses an

intensive insulin management system (IMS) or an **insulin pump** with respect to **Diabetes**, they may qualify for the **DTC**.

EMPLOYMENT INCOME

HAIRDRESSERS

In a November 25, 2009 **Tax Court** of Canada case, the Court found that the Appellant engaged **nine hairdressers** in **insurable** and **pensionable** employment at the Appellant's hairdressing establishment.

Therefore, both **Canada Pension Plan** and **Employment Insurance** premiums had to be paid.

SPECIAL WORKSITE

The Income Tax Act permits an employer to provide a **tax-free allowance** in respect of **board, lodging and transportation** while the employee is at a "**special worksite**" assuming that certain

criteria are met including that the taxpayer maintains, at another location, a **self-contained domestic establishment (SCDE)** as the taxpayer's principal place of residence.

INSURABLE EMPLOYMENT

The Employment Insurance Act (EIA) notes that insurable employment **does not include** the employment of a person that **controls more than 40%** of the **voting shares** of the corporation.

It also **excludes** employment if the employer and employee are **not dealing at arm's length** and they **do not have a substantially similar contract** of employment as other arm's length employees. (Professional advice may be needed in this area.)

Also, the **Employment Insurance Regulations** deem certain persons to be involved in **insurable employment** including **stevedores, lumbering or logging, placement or employment agency, barbering or hairdressing establishments, and passenger vehicle operators**.

Each of the categories has their own **specific details**.

TAXABLE BENEFITS

CRA Guide **T4130** provides information on **taxable and non-taxable employment benefits and allowances** including board and lodging, cellular phone service, child care expense, counseling services, disability related employment, discounts on merchandise, education benefits, gifts and awards, group term life insurance policies, housing, interest-free and low

interest loans, internet use, loyalty and other “points programs”, meals, medical expenses, moving expenses, municipal officers expense allowance, parking, power saws, premiums under provincial hospitalization, private health service plans, professional membership dues, recreational facilities and club dues, RRSPs, security options, social events, spouse’s or common-law partner’s travelling expenses, TFSAs, tool reimbursements, transit passes, transportation to and from home, travel allowances, uniforms and

special clothing, and wage-loss replacement plans or income maintenance plans.

The Guide also has a **benefits chart**, which lists the benefits and the applicability of **CPP**, **EI**, and **GST/HST**.

SCHOLARSHIPS FOR THE CHILDREN OF EMPLOYEES

In a September 29, 2010 **External Technical Interpretation**, CRA notes that they **now accept** that where an **arm’s length employer** provides a **post-secondary scholarship**, bursary or free tuition to **family members** of an **employee** under a **bona fide Program**, the amount may be **non-taxable**.

BUSINESS/PROPERTY INCOME

INTEREST EXPENSE

In an August 10, 2010 **Internal Technical Interpretation**, CRA notes that normally they consider **interest costs** in respect of funds borrowed to purchase **common shares** to be **deductible** on the basis that there is a **reasonable expectation** that the common shareholder will receive **dividends**. These comments are also generally applicable to investments in **Mutual Fund Trusts** and **Mutual Fund Corporations**.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

Case 1 - Independent Contractor

In an October 22, 2010 **Tax Court of Canada** case, given the **clear shared common intention** to be a **subcontractor** between the payer and the workers, the Court found that the workers were **independent contractors**, not employees.

Case 2 - Independent Contractor

In an August 31, 2010 **Tax Court of Canada** case, the **issue** was whether the **salesman** was an **independent contractor** or engaged in employment income. The **Court** concluded that the salesperson was an **independent contractor** and noted that:

1. The worker had signed **Written Agreements** with the Appellant when he began his working relationship on the basis that he was an **independent contractor**.
2. The facts that apply in respect to establishing **control**, ownership of **tools**, possibility of **profit**, risk of loss, and **integration** show that the worker was an **independent contractor**.
3. **No controls** were exercised on his services and the worker had the opportunity to make a **profit** and took on a risk of a loss. He provided his own **work tools** and his own equipment. He had **no job security** and was free to accept **other employment** or contracts while engaged.
4. The test of **intent** also indicates that the worker was an **independent contractor**.

Case 3 - Independent Contractor

In a November 16, 2010 **Tax Court of Canada** case, the **Court** found that the **workers** were **independent contractors**, not employees, and noted that:

1. A **mutual intention** to create an **independent contractor relationship** indicates that the individuals were **independent**

contractors, not employees.

2. The workers were able to **set their own hours of work**, although within certain limits.
3. The workers were able to **work for other clients** without consent of the payer.
4. The workers used their **own vehicles** to pick up supplies and charged an hourly rate for the use of their vehicles.
5. The workers carried on their business under a **business name**, for example, “Cleaning with Care”, and had their **own liability insurance coverage**.

Case 4 - Employee

In a November 22, 2010 **Tax Court of Canada** case, the **Court** found that the workers were **employees** and noted that:

1. The parties **did not share a common understanding** that the worker was to be **self-employed** and not an employee. Where the intention of the parties cannot be ascertained, it is necessary to look at all the facts to see the legal relationship.
2. The **payer** provided all the **tools and equipment**, except for a keyboard.
3. The worker had **no responsibility for investment** in management.
4. The **worker** had **no expenses** and **no liability** exposing her to a risk of loss and there was no opportunity for her to increase her income.
5. The **worker** received **instructions and directions** from the payer on a daily basis.

OWNER - MANAGER REMUNERATION

DIRECTOR LIABILITY

In an October 26, 2010 **Tax Court of Canada** case, the taxpayer was a

director of a corporation that failed to remit **payroll source deductions** and the **director** was assessed **personally**. The taxpayer argued that he had **resigned more than two years** before CRA assessed him and, therefore, was **statute-barred**. Also, he argued that he exercised **due care and diligence** by hiring a **bookkeeper** to deal with the payroll.

Taxpayer Loses

The Court noted that a resignation does **not become effective** until the provisions of the **Business Corporation Act** are met.

With respect to **due diligence**, the fact that he hired a bookkeeper to handle the payroll was **not enough**. The taxpayer had not shown that he took action to prevent the bookkeeper's failure to remit the source deductions.

CPP AND EMPLOYEE PROFIT SHARING PLANS (EPSP)

The maximum **pensionable earnings** for **2011** are **\$48,300** with a basic exemption of **\$3,500** and an employer/employee rate of **4.95%** leaving a maximum employer/employee contribution of **\$2,218**, or a maximum self-employed contribution of **\$4,436**. One approach to receive compensation that may **not be pensionable** is to use a bona fide **EPSP**.

However, some taxpayers choose to have enough pensionable earnings to **retain eligibility for CPP disability payments**.

Recent court cases indicate that an **EPSP** can be used to permit the **owner-manager** to opt out of the **CPP system**, but may not remove other employees from the CPP and EI systems in respect of their **regular remuneration**.

Professional assistance is needed in this area.

RELATIONSHIP BREAKDOWN

LIVING IN THE SAME RESIDENCE

In a July 27, 2010 **External Technical Interpretation**, CRA notes that it is **possible** that both spouses can **"live apart"** because of a breakdown of their marriage for deductible/taxable **alimony** purposes **even if they still live under the same roof** if, for example, the following circumstances are present:

- they occupy **separate bedrooms**;
- there is a **lack of sexual relations**;
- there is little or **no communication**;
- there are **no domestic services** to each other;
- the spouses receive their **mail separately**; and
- the spouses have **no common social activities**.

LUMP-SUM PAYMENTS FOR SPOUSAL SUPPORT ARREARS

In a September 20, 2010 **Technical Interpretation**, CRA notes that **lump-sums** paid for **arrears** of spousal support, even if made under a Court Order, may **not be deductible/taxable**.

Editor's Comment

The **jurisprudence** in this area is mixed. Therefore, **legal/tax advice** may be needed with respect to the deductibility/taxability of **arrears payments**.

ESTATE PLANNING

DONATION SCHEMES

In an October 28, 2010 **Federal Court of Appeal** case, the Federal Court **confirmed the Tax Court decision** which found that Mr. M should **not receive any donation tax credit** even though he did have a cash donation of \$30,000 in return for the inflated \$100,000 donation receipt.

DISBURSEMENT QUOTA - CHARITIES

In a September 24, 2010 **External Technical Interpretation**, CRA notes that the **2010 Federal Budget** **repeals the disbursement quota requirement** and modifies the **capital accumulation** rule for **charities**.

The Budget also **extends the Anti-Avoidance Rules** to situations where the **purpose** of a transaction was to **delay unduly or avoid** the disbursements of the funds by the charity.

CANADA PENSION PLAN (CPP)

New legislation includes **many changes** to the **Canada Pension Plan**, most of which take place in **2012**.

For example, in 2012 individuals **under the age of 65** who **work**, as well as their employers, will be required to make **CPP contributions**, even if they are **receiving a CPP retirement benefit** early. This will be **voluntary** for individuals age 65 or over, but **employers** of those opting to participate in the CPP would be **required** to also contribute.

REFINANCING PRESCRIBED RATE LOANS

Family **income splitting** may be **achieved** by making **loans between** family members at the **prescribed interest rate**, which is currently **1%** until March 31, 2011. This 1% rate has been in effect since the second quarter of 2009. Previous to this, the prescribed interest rate was higher.

Therefore, consideration could be given to entering into **new loans** and, **properly refinancing** previous loans from periods before the second quarter of 2009.

GST/HST

PLACE OF SUPPLY RULES

In a June 3, 2010 52-page Release, CRA provides information on the **Place of Supply Rules** for purposes of GST/HST for determining where a supply is made. In **general**, the place of supply is the **address of the recipient** of the **service** or, **where the good is delivered**. This is **important** because of the different **GST/HST** rates – British Columbia, **12%**, Ontario, New Brunswick and Newfoundland **13%**, Nova Scotia **15%** and other jurisdictions **5%**.

It is important to note that provinces that still have a **Provincial Sales Tax**, such as Saskatchewan, Manitoba, Prince Edward Island and Quebec may have different Place of Supply Rules.

DID YOU KNOW

PENSIONS

For an individual who has reached **age 65** before the end of the year, the types of **“pension income”** that are **eligible** for a tax credit on up to **\$2,000** and for **splitting** with a spouse or common-law partner include:

- a **life annuity** out of a superannuation or pension plan;
- an annuity payment out of a **Registered Retirement Savings Plan**
- a payment out of a **Registered Retirement Income Fund**;
- an annuity payment from a **Deferred Profit Sharing Plan**; and
- the **interest portion** of certain **other annuities**.

For **example**, if a person does not have any otherwise qualifying **“pension income”**, is age 65 or over, and does not want to draw down on registered assets; he/she could consider purchasing a **non-registered annuity**. The deposit should be enough to produce at least \$2,000 of interest income which qualifies for the **pension income** amount.

Also, individuals that are **65 years old** with an **RRSP** may wish to consider transferring a portion of the **RRSP** into an **annuity** or into a **Registered Retirement Income Fund** on which **pension income** may be received. **Professional advice** may be needed in this area.

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.

Don't Forget

**SCROLL DOWN TO FIND THE CHECK LIST
TO HELP YOU GATHER WHAT YOU WILL NEED FOR YOUR 2010 TAXES**

- 1) All **information slips** such as
T3, T4, T4A, T4A(OAS), T4A(P), T4E, T4PS, T4RIF, T4RSP, T5, T10, T2200, T2202, T101, T1163, T1164, TL11A, B, C and D; T5003, T5007, T5008, T5013, T5018 (Subcontractors), RC62
and corresponding provincial slips.
- 2) Details of **other expenses** such as:
 - employment related expenses - Provide Form T2200 - Declaration of Conditions of Employment,
 - tools acquired by apprentice vehicle mechanics,
 - business and employment purchases like vehicles, supplies, etc.,
 - interest on money borrowed to purchase investments,
 - investment counsel fees,
 - moving expenses - including costs of maintaining a vacant former residence,
 - child care expenses,
 - alimony, separation allowances, child maintenance,
 - safety deposit box fees,
 - accounting fees,
 - pension plan contributions,
 - film and video production eligible for tax credit,
 - mining tax credit expenses,
 - business research and development,
 - adoption related expenses,
 - clergy residence deduction information, including Form T1223,
 - disability supports expenses (speech, sight, hearing, learning aids for impaired individuals and attendant care expenses),
 - tradeperson's tools acquired by an employee,
 - public transit passes acquired,
 - amounts paid for **programs** for children **under age 16** at any time during the year (**under 18** for children with **disabilities**).
- 3) Details of **other investments** such as:
 - real estate or oil and gas investments - including financial statements,
 - labour-sponsored funds.
- 4) If you or one of your dependants was in full time attendance at a **college or university**, details concerning name of institution, number of months in attendance, tuition fees, income of dependant, Form T2202.
- 5) Details and **receipts** for:
 - Registered Retirement Savings Plan (RRSP) contributions,
 - professional dues,
 - tuition fees for both **full-time** and **part-time** courses - including mandatory ancillary fees, and Forms T2202, TL11A, B, C and D where applicable,
 - charitable donations (including publicly traded securities),
 - medical expenses (including certain medical related modifications to new or existing home and travel expenses). Note that purely cosmetic procedures do not qualify after March 4, 2010.
 - political contributions.
- 6) Details of **other income** for which no T slips have been received such as:
 - other employment income (including stock option plans and Election Form T1212),
 - business income,
 - partnership income,
 - rental income,

- alimony, separation allowances, child maintenance,
 - pensions (certain pension income may now be **split** between spouses - see #35)
 - interest income earned but not yet received - example Canada Savings Bonds, Deferred Annuities, Term Deposits, Treasury Bills, Mutual Funds, Strip Bonds, Compound Interest Bonds
 - professional fees,
 - director fees,
 - scholarships, fellowships, bursaries.
- 7) Details of previous **capital gain exemptions** claimed, **business investment losses** and **cumulative net investment loss accounts**.
- 8) Name, address, date of birth, S.I.N., and province of **residence** on December 31, 2010.
- 9) **Marital/common-law status** and spouse/partner's income, S.I.N. and birth date.
- 10) List of **dependants/children** - including their incomes and birth dates.
- 11) Details of **capital gains and losses** realized in 2010
- 12) Are you **disabled or are any of your dependants** disabled? Provide Form T2201 - disability tax credit certificate. This also includes extensive therapy such as kidney dialysis and certain cystic fibrosis therapy. Also, the **transfer rules** include relatives such as parents, grandparents, child, grandchild, brothers, sisters, aunts, uncles, nephews or nieces.
- Persons with **disabilities** also may receive tax relief for the cost of **disability supports** (eg. sign language services, talking textbooks, etc.) incurred for the purpose of **employment** or **education**.
- Also, see #33 for **Registered Disability Savings Plan** information.
- 13) Details regarding residence in a prescribed area which qualifies for the **Isolated Area Deduction**.
- 14) Information regarding **child tax benefit** receipts.
- 15) Details regarding contributions and withdrawals from **Registered Education Savings Plans**.
- 16) Details regarding **RRSP - Home Buyers' Plan** withdrawals and repayments; **RRSP - Lifelong Learning Plan** repayment.
- 17) Receipts for 2010 income tax **installments** or, payments of tax.
- 18) Copy of 2009 personal tax **returns**, 2009 Assessment **Notices** and any correspondence from Canada Revenue Agency (CRA).
- 19) 2010 **Personalized Tax information** which CRA may have sent you.
- 20) Do you want your **tax refund or credit** deposited directly to your account in a financial institution? Yes/No.
- To start direct deposit, or to change banking information, attach a void personalized cheque or your branch, institution and account number.
- 21) Details of **carry forwards** from previous years including losses, donations, forward averaging amounts, registered retirement savings plans.
- 22) Details of **foreign property** owned at **any time** in 2010 including cash, stocks, trusts, partnerships, real estate, tangible and intangible property, contingent interests, convertible property, etc..
- 23) Details of **income** from, or **distributions** to, **foreign entities** such as foreign affiliates and trusts.
- 24) Details of your **Pension Adjustment Reversal** if you ceased employment and were in a Registered Pension Plan or a Deferred Profit Sharing Plan. (T10 Slip)
- 25) If you provided **in-home care** for a **parent or grandparent** (including in-laws) 65 years of age or over, or an infirm **dependent relative**, a federal tax credit may be available.
- Also, the caregiver may claim related **training costs** as a medical expense credit.
- 26) Interest paid on qualifying **student loans** is eligible for a tax credit.
- 27) **Retroactive lump-sum payments**
- Individuals receiving qualifying retroactive **lump-sum payments** over \$3,000 may be allowed to use a special mechanism to compute the tax.
- 28) Changes in **family circumstance** that could affect the **Goods and Services Tax Credit**, such as births, deaths, marriages, reaching the age of 19 years, and becoming or ceasing to be a resident in Canada.
- 29) **Children** of low or middle income parents may be entitled to a **Canada Learning Bond** of **\$500** in the initial year and **\$100** per year until age 15. Please ask us for details.
- 30) Do you have any **personal interest expense** - such as on a house mortgage or vehicle?
- If so, it may be possible to take steps to convert this into deductible interest. Please ask us for details.

- 31) An **investment tax credit** is available to the employer in respect of each **eligible apprentice** employed in one of the 45 Red Seal Trades. Also, a **\$1,000 grant** is available for first and second year apprentices. A **completion** grant of \$2,000 may also be available to the apprentice.
- 32) Have you received the **Universal Child Care Benefit** of **\$100 per month** for each child under **6 years** of age?
- 33) Commencing in 2008, any person eligible for the **disability tax credit**, or their parent or legal representative, may establish a **Registered Disability Savings Plan** which receives **government grants**. Please ask us for details.
See #12 for information on **disabilities**.
- 34) The age limit for **maturing** Registered Pension Plans, Registered Retirement Savings Plans, and Deferred Profit Sharing Plans is **71 years** of age.
- 35) Spouses may **jointly elect** to have up to 50% of **certain pension income** reported by the **other spouse**. Please ask us for details.
- 36) Individuals 18 years of age and older may deposit **up to \$5000** per year into a **Tax-Free Savings Account** commencing in 2009. Please ask us for details.
- 37) Are you a first-time **home buyer** in 2010?
A tax credit based on \$5,000 (@15% = \$750) is available for qualifying homes acquired after January 27, 2009.
- 38) 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.
- 39) Commencing July 2011, the law is changed to allow two eligible individuals who **share custody** after a **relationship breakdown** to share the Canada Child Tax Benefit, Universal Child Care Benefit, and the GST/HST Credit in respect of the child.

"Confused? Call Kim she'll help you!"