



# Saklas & Co.

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Accounting and Tax Made Simple!

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## Tax Tips & Traps

2013 First Quarter

### PERSONAL TAX

#### MEDICAL EXPENSES

You may claim medical expenses for *yourself*, your *spouse* or *common-law partner*, and your or your spouse's or common-law partner's *children* who are *not age 18* before the end of the taxation year. Medical expenses may also be claimed for certain *other dependents*.

#### MEDICAL EXPENSES - TRAVEL

In a September 5, 2012 *Technical Interpretation*, CRA reviewed a situation where a husband and wife drove their *infant child* to a hospital in *another city* where the infant had surgery. Including the *pre-admission* at the hospital, the child was in the hospital for a *number of days*. Following the surgical procedure, the parents stayed with the child in the city for an additional number of days for a *post-surgery* follow-up before returning directly home.

CRA notes that an individual may claim an amount paid for *reasonable travel expenses* (for example, accommodation, meals and parking) incurred in respect of *the patient* and, where the patient was certified by a medical practitioner to be incapable of travelling without the assistance of an

attendant, in respect of *one individual* who accompanied the patient, in certain circumstances.

CRA notes that the above requirements may be met *even if* medical services are available nearer to the individual's locality if it is reasonable for the individual to have travelled to the place where the medical services were obtained.

#### FAMILY CAREGIVER TAX CREDIT

Effective *January 1, 2012*, the new *Family Caregiver Tax Credit*, a 15% non-refundable credit on *\$2,000*, will provide tax relief to caregivers of mentally or physically *infirm* dependent *relatives*, including, for the first time, *spouses, common-law partners*, and *minor children*.

### EMPLOYMENT INCOME

#### MOTOR VEHICLE EXPENSES

In a July 31, 2012 *Technical Interpretation*, CRA notes that where an employee receives a *motor vehicle allowance* that is *unreasonable*, the employee may *include* the allowance in *income* and claim a *deduction* for the *vehicle expenses* incurred in the course of carrying out his/her employment duties if they are reasonable and supported by receipts.

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Motor vehicle *expenses* based on a *fixed kilometre rate* may *not* be *deductible* as they may not reflect the actual expenses incurred.

The *best evidence* to support the *employment use* of a vehicle is an accurate *log book* for the *entire year*, showing for *each trip* - the *date*, the *destination*, the *reason* for the trip, and the *distance* covered. For *alternative records* to support a claim, see [www.cra.gc.ca/whatsnw/lgbk-eng.html](http://www.cra.gc.ca/whatsnw/lgbk-eng.html).

### QUESTIONS?

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## EMPLOYEE EXPENSES

### Supplies

CRA notes that an employee can deduct the cost of *supplies* paid if the employee meets *all* of the following conditions:

- Under your contract of employment, you had to provide and pay for the supplies.
- You used the supplies directly in your work.
- Your employer has not repaid and will not repay you for these expenses.
- You keep with your records a copy of Form T2200, Declaration of Conditions of Employment, which has been completed and signed by your employer.

Supplies are only materials used *directly in your work*, and for no other purpose.

Supplies *include items* such as stationery, stamps, toner, ink cartridges, street maps, and directories. Supplies do *not* include items such as briefcases or calculators.

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## BUSINESS INCOME

### MARIJUANA BUSINESS

In an October 17, 2012 *Tax Court of Canada* case, CRA reassessed the Appellant using the *net worth assessment method* and included unreported business income for the Appellant's 2004, 2005 and 2006 tax years and assessed gross negligence penalties on the unreported amounts with respect to her *business of growing and selling marijuana*.

#### Taxpayer Loses - Big Time

The Court concluded that the Appellant had made a *false statement or omission* in filing her tax which was attributable to *gross negligence*.

These net worth assessments were also made beyond the normal reassessment period which means that the *onus* was on the *CRA* to establish a *misrepresentation attributable to neglect, carelessness, willful default or fraud*.

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## OWNER-MANAGER REMUNERATION

### 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 with each other at arm's length*. However, if the employer is *related* to the employee, they are deemed to deal with each other at *arm's length* if the Minister of National Revenue is *satisfied* that, having regard to all the circumstances of the employment, including the *remuneration* paid, the *terms and conditions*, the duration and the nature and *importance of the work performed*, it is reasonable to conclude that they would have entered into a *substantially similar contract of employment* if they had been dealing with each other at arm's length.

Therefore, to avoid EI, the taxpayer must show that they do *not* have a substantially similar contract of employment as other arm's length employees.

#### Caution

If EI has been incorrectly paid for a family member and a refund is to be requested from the CRA, or a Ruling is to be asked for, this could be a *lengthy process*.

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## ESTATE PLANNING

### OLD AGE SECURITY - VOLUNTARY DEFERRAL

The *voluntary deferral* of the Old Age Security (*OAS*) pension proposed in the 2012 Federal Budget will provide the *option to defer* take-up of the OAS pension by up to five years past the age of eligibility, in exchange for an enhanced monthly benefit of *0.6 percent per month* of deferral (7.2 percent for a full year of deferral). Once a person chooses to receive their OAS pension, this percentage increase will be applied to the benefit for the rest of their lives.

If an individual decides to make a five-year deferral, his/her annual pension will be \$8,814 instead of \$6,481 (in 2012 dollars).

This new voluntary deferral of the OAS pension starts in *July 2013*.

### CANADA PENSION PLAN - POST-RETIREMENT BENEFIT (PRB) CALCULATOR

*Service Canada* has a *Post-Retirement Benefit calculator* which notes that:

1. The *PRB* is a new benefit for people who work and make CPP contributions while *already receiving* a CPP retirement pension. The Government of Canada has developed this calculator to help you better understand how contributions to the *PRB* will further contribute to your financial security after you retire.
2. A *PRB* is available the *year following* the year you make contributions. You will receive a new *PRB* for each year you make contributions. Each new *PRB* will be added to any previous *PRBs*.

The calculator is available at [http://srv111.services.gc.ca/PRB\\_01.aspx](http://srv111.services.gc.ca/PRB_01.aspx).

### NON-PROFIT ORGANIZATION (NPO) AUDIT PROJECT

*CRA's guidelines* note that an *NPO* must be organized and operated *exclusively* for any purpose *other than profit*. Generally, an Organization claiming the exemption can earn a profit, as long as the profit is *incidental* and arises from activities directly connected to its not-for-profit objectives. In addition to operating without a profit purpose, an Organization *cannot* make its income *available* for the *personal benefit* of its members.

Where an Organization intends to *earn a profit*, particularly from outside (non-member) sources and uses the income to *reduce member fees*, it is likely operating with a *profit purpose* and making income available to members.

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Examples of profitable activities that might legitimately be undertaken through a NPO Organization include running a **cantina at a rink** used for amateur hockey or a **cafeteria** at a not-for-profit youth hostel, or **charging admission above direct cost** for a children's concert (where the not-for-profit purpose of the Organization was to organize and promote youth participation in music).

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## WEB TIPS

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### NEW YEAR'S RESOLUTIONS

With the New Year just beginning, the following Web Tips provide you with various tools to assist in developing, maintaining and reaching those newly set goals and resolutions.

#### *Goal Tracker*

[www.joesgoals.com/](http://www.joesgoals.com/) was initially developed by a person to track and achieve his **personal goals**. As such this website provides a fairly simple interface for **creating, monitoring and tracking** your individual goals by tallying your achievements, actions, or lack of actions on a daily basis. It also provides summary information and a simple analysis of your progress.

#### *Get Fit*

[www.traineo.com/](http://www.traineo.com/) provides an online community of those wishing to **improve their health** – it provides the **motivation, camaraderie and support** of a community with similar goals. Basic statistics such as weight and BMI are also **tracked** and displayed on the site.

[www.fitday.com/](http://www.fitday.com/) provides an **online journal** and a collection of tools such as a calorie counter, long-term diet analysis and advice/discussion area to assist you in achieving your health goals.

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## INTERNATIONAL

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### U.S. RENTAL PROPERTY

The following comments primarily relate to the ownership of **U.S. rental property** by **Canadians**. They may not apply to individuals such as U.S. citizens, U.S. residents, and Green Card holders.

### U.S. Withholding and Filing Responsibilities

The IRS has posted an online article entitled "Foreign Persons Receiving Income from U.S. Real Property". According to this release, taxation depends on whether earnings are considered **investment income** having tax withheld at 30% of gross earnings, or "**effectively connected** with a U.S. trade or business" and taxed on a net income basis. A foreign owner can elect to have the income treated as "effectively connected" by submitting a properly completed **Form W-8ECI**.

With regards to the filing of income tax returns, a non-resident failing to submit a timely filed income tax return may **lose the ability to claim deductions** against the rental income.

**State filing** and tax payment may also be required.

#### Editors' Comment

It may be worthwhile to file tax returns even if a loss is experienced so as to **capture the losses for later use** when net incomes become positive or when a **profit is realized** on the sale of the property.

#### Sale of Real Estate

The **United States** imposes taxes on profits on the **sale of U.S. real estate** by a Canadian under the Foreign Investment in Real Property Tax Act. To enforce collection, a **10% withholding tax** is paid to the IRS **by the purchaser (or escrow agent as applicable)**. A Canadian person may be **exempt** from the 10% withholding tax if the selling price is **less than \$300,000** and the **buyer** intends to use the property as a "**residence**". The buyer must sign an affidavit to this effect. Alternatively, the vendor can **apply to the IRS** for a reduction in the withholding tax to the maximum possible U.S. tax. The application for a **waiver of the withholding tax** must be sent to the IRS prior to the closing of the sale.

### Editors' Comment

If the seller does not have an Individual Taxpayer Identification Number (**ITIN**), he or she may apply for one with the waiver application. On a practical side, some escrow agents administering the sale will not wait for the **ITIN** to be processed and simply remit the withholding to the IRS. If possible, it is recommended to **get the ITIN prior to the sale** to avoid this issue.

If the withholdings are sent to the IRS, the seller may file a U.S. tax return at the beginning of the next year to recuperate any withholdings paid in excess of what the actual tax on the sale would be.

Also note that **some states** have a withholding tax on the selling price of real property (such as California).

### CANADIAN SNOWBIRDS - TIME SPENT IN THE U.S.

If an individual spends **183 days** or more in the U.S. they will be considered to be a U.S. resident (subject to some very minor exceptions). As such, he/she will be subject to **U.S. taxation on worldwide income** and may need to file several other forms although some relief may be available if the individual is considered a Canadian resident under the Canada-U.S. Treaty.

If an individual spends less than 183 days in the U.S. in the year, but the total of their time as determined by the **following formula (substantial presence test)** is **183 days or greater**, they would be considered U.S. residents.

The total of:

- All the days you were present in the current year, and
- 1/3 of the days you were present in the first year before the current year, and
- 1/6 of the days you were present in the second year before the current year.

If determined to be a resident under this scenario, the individual would be subject to the same considerations as discussed in the "presence of 183 days or more" scenario above.

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If an individual is in the U.S. for less than 183 days but is considered a resident under the substantial presence test, they may complete Form 8840 - Closer Connection Exception Statement for Aliens to except themselves from residency.

#### Editors' Comment

Specific U.S. advice may be needed in these areas.

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#### DID YOU KNOW

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##### CPP SHARING

Spouses or common-law partners who are both at least **60 years old** and who are **both receiving** the CPP retirement pension can **share** their **CPP retirement benefits**. If only one of you is a CPP contributor, you may **share** that **one pension**. This may have **tax advantages**.

The portion of the retirement pension that can be shared is based on the number of **months** you and your spouse or common-law partner **lived together** during your **joint contributor period**. Your joint contributor period is the time during which either one of you could have contributed to the CPP if you had sufficient earnings.

See the [HRSDC website](#) for more details on **CPP sharing**.

#### QUESTIONS?

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## 2012 PERSONAL INCOME TAX RETURN CHECKLIST

### INFORMATION REQUIRED INCLUDES:

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 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); U.S. and German Social Security Pensions have special rules.
  - 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, and
  - scholarships, fellowships, bursaries.
  
3. 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,

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- scientific research and development expenses,
- 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 of physical activity or arts* for children *under age 16* at any time during the year (*under 18* for children with *disabilities*).

Up to \$500 may be claimed for each eligible child both the **fitness** tax credit and **arts** tax credits.

4. Details of *other investments* such as:

- real estate or oil and gas investments - including financial statements,
- labour-sponsored funds.

5. Details and *receipts* for:

- Registered Retirement Savings Plan (RRSP) contributions,
- professional dues,
- tuition fees for both **full-time** and **part-time** courses for you or a dependant - including mandatory ancillary fees, and Forms T2202, TL11A, B, C and D where applicable,
- charitable donations,
- medical expenses for you or a dependent person (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 *capital gains and losses* realized in 2012.

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, 2012.

9. *Personal status* – single, married, common-law, separated, divorced, widowed.

If *married* or *common-law* – spouse/partner's income, S.I.N. and birth date.

10. List of *dependants/children* - including their incomes and birth dates.

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11. If you or one of your dependants was in attendance at a *college or university*, details concerning name of institution, number of months in attendance, tuition fees, income of dependant, Form T2202.
12. a) 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.  
  
b) Are you the *caregiver* for any infirm family members?
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. Details on 2012 income tax *installments* or, payments of tax.
18. Copy of 2011 personal tax *returns*, 2011 Assessment *Notices* and any correspondence from Canada Revenue Agency (CRA).
19. 2012 *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.
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 2012 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.

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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* 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 personal 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 in respect of each *eligible apprentice* employed in one of the Red Seal Trades. Also, a *\$1,000 grant* is available for first and second year apprentices.
32. Have you received the *Universal Child Care Benefit* of *\$100 per month* for each child under *6 years* of age?
33. 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

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us for details.

37. Are you a first-time *home buyer* in 2012?

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. Are you a *U.S. citizen, Green Card Holder*, or were you, or your parents *born in the United States*? You likely have U.S. filing obligations.

40. Do you have, or share, *custody* of a *child* after a relationship breakdown? You may be entitled to the CCTB, UCCB and GST/HST Credit.

41. Have you spent more than 200 hours acting as a *volunteer firefighter*? You may be eligible for a Federal Tax Credit.

42. Are you an *aboriginal* person? Special tax rules may apply.

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.

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For any questions... give us a call.

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