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Tax Tips & Traps

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This publication is a high-level summary of the most recent tax developments applicable to business owners, investors, and high net worth individuals. Enjoy!

TAX TICKLERS... some quick points to consider...

- **E-filed personal tax returns** take **1.6 weeks on average** as compared to **5 weeks** for those that are paper-filed.
- Starting in 2016, federal tax relief of **15%** is available on up to **\$10,000** of eligible **renovations** to a qualified dwelling each year to **enhance mobility** or **reduce risk of harm** for qualifying individuals (**seniors 65 years** and up, or persons eligible for the **Disability Tax Credit**).
- CRA **cannot** give **refunds** to a **corporation** which has not filed its tax **return** within **3 years** of the end of its tax year. However, the denied refund may be eligible for **re-appropriation** against future tax debts.

THE UNDERGROUND ECONOMY: CRA Highlights High-Risk Industries

CRA recently quoted and discussed an April 29, 2015, **Statistics Canada** release with regards to new **underground economy** that included estimates for Canada for the 1992 through 2012 period. Some figures included:

- from 2007 to 2012 underground economy activity **increased 14%**, compared to a 17% increase in GDP; and,
- four sectors accounted for 66% of the total estimated underground activities – **residential construction** (28%); **finance, insurance, real estate, rental, leasing and holding companies** (14%); **retail trade** (12%); and **accommodation and food services** (12%).

CRA noted that they will analyze the results of this study to **develop targeted strategies**. **Budget 2015** proposed to provide an additional **\$118 million** over 5 years to enhance CRA's underground economy **audit efforts**.

CRA **audit and review** in the industries listed above will most likely **increase** in the upcoming months and years.

Action Item: *If operating in these industries, be prepared for a higher chance of audit or review.*

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EMPLOYEE BENEFITS: Tax Efficient Compensation

An employee is generally **taxable** on the value of a **benefit of any kind** whatsoever realized by virtue of their employment. However, some benefits that **primarily benefit** the employer, as well as certain other select cases, **may be** considered **non-taxable** to the employee.

The following is a list of some recent CRA discussions on different employment benefits:

- **Employee housing** at a location **distant from** the employee's usual place of **residence** results in a **taxable benefit unless** the work is at a **remote location** (CRA generally accepts a location at least **80 kilometers away** from the nearest community with a **population of at least 1,000 people**) or at a **temporary work location**, regardless of whether it is impractical or impossible for the employee to return to their regular place of residence between shifts.
- **Cell phone reimbursements** for a reasonable basic plan **required for employment** purposes will **not** create a **taxable** benefit. However, any form of **allowance** would be **taxable**, so payments to employees must be made with regards to actual costs incurred in order to remain non-taxable. As well, any payment towards the **cost of the cell phone** itself would be **taxable** to the employee.
- **Health programs** reimbursing costs of physical activity will generally result in a **taxable benefit unless** the nature of the **job** carries **unusual fitness** requirements. CRA may also consider the benefit non-taxable where the employer provides **fitness facilities for all employees** or owns a membership which permits all employees to use a fitness facility.
- **Uniforms** are **not** a **taxable** benefit if they are either designed to **protect the employee** from on the job hazards (e.g. safety equipment) or are **distinctive uniforms** (e.g. clothing identifying the employer), but **each component** of the clothing must be **considered separately**. In one case reviewed, CRA indicated that specific footwear which did not meet either of the above criteria would result in a taxable benefit if paid for by the employer.
- **Income maintenance insurance benefits** would be **tax-free** where **all premiums** were **paid by the employee**.

Note that the taxability of employee benefits can be a grey area. There may be anomalies and exceptions even within the above examples.

Action Item: Consider reviewing employment compensation packages to ensure the most tax-efficient structures with no tax surprises for employees.

FARMS – SALES OF LAND AND RELATED RIGHTS: Business Income or a Capital Gain?

If the sale of a property is considered to be on “**account of capital**”, the tax is generally half of what it would be had it been on “**account of**

business”. The income tax could even be completely eliminated if the disposition is:

- considered to be on account of capital;
- in respect of a qualified farm or fishing property; and,
- within the lifetime capital gains exemption limit of the individual (\$813,600 for 2015). (For eligible farm and fishing properties sold after April 21, 2015, the limit has been increased to \$1,000,000.)

It is important to note that even if income tax is eliminated, **alternative minimum tax (AMT)** may be imposed. However, AMT is viewed as a deposit by some since the amount paid can often be used to reduce future income taxes payable.

In a recent **Technical Interpretation**, CRA noted that whether the sale of a **right to operate a sandpit** on a **family farm** gives rise to either a **capital gain** or **business income** is a question of fact. Relevant facts to consider would include the **nature of the business** carried on by the taxpayer, the **number of transactions** under review, the **circumstances** which **determine** the **selling price**, and the seller's **intention** when original purchasing the farm. In other words, we need to determine whether or not the farm owner is in the business of selling sand (or sandpit operation rights).

If the factors as a whole indicate that the farm owner's sale of the property or rights **constitute a business**, then the gains will be taxed as **business income** rather than under the **preferential rates associated with capital sales**.

Action Item: Before purchasing or acquiring certain rights, consider whether the eventual disposition may benefit from a preferential tax treatment.

LEASEHOLD IMPROVEMENTS ON BUILDING OWNED BY SHAREHOLDER: Is there a Taxable Benefit?

In a September 24, 2015 Technical Interpretation CRA noted that where a Corporation makes an **addition or leasehold improvement** to a building **rented from a shareholder**, and the improvement **vests in the owner** of the building (becomes owned by the shareholder), a **benefit** may be considered to have been **conferred on the shareholder**. This means that the shareholder would have to **pay tax on the value** of the benefit.

CRA noted that if the **shareholder reimburses the Corporation** for the value of the improvements **as they are completed** each year, or at the end of the lease term, the **benefit may be reduced** or eliminated, depending on the particulars. The **value of the benefit** is roughly the present value of the amount by which the improvement increases the value of the building to the shareholder at the time the building reverts to the shareholder.

Action Items: Exercise caution when a corporation renovates or improving a building that is owned by its shareholder.

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DONATING ITEMS RATHER THAN CASH: A Valuation Concern

In a recent Tax Court of Canada case, the taxpayer **donated several bottles of wine** to a registered charity over three years and received **donation receipts** totaling \$10,700 for the **fair market value (FMV)** of the wines. The FMV of the wines for the donation receipt was **evaluated by a sommelier** who was a graduate of the Oenology Faculty of Bordeaux. CRA significantly reduced the donation receipts by a total of \$7,331 based on their separate valuation.

The Court **accepted the taxpayer's valuation** of the wines noting that the Crown did not **produce evidence contrary** to the taxpayer and **failed to raise doubts** about the credibility of the Appellant's testimony.

Action Item: If donating large value items, ensure that the amount listed on the donation receipt is backed by credible proof or valuations.

EXECUTORS FOR AMERICANS: Watch Out!

It was noted in a recent Canadian Tax Foundation article that under certain circumstances, the **Internal Revenue Service (IRS)** could **hold an Executor** or a **beneficiary** of an **Estate personally liable** for the deceased person's **unpaid U.S. Federal Income, Gift and Estate Tax**, and for any **interest and penalties** thereon.

It was also noted that if a U.S. citizen who lives in Canada does not file their U.S. returns, or if those returns contain errors, these rules may generate **costs and burdens for the family members and the fiduciaries.**

This could also extend to **penalties** imposed for not filing **Foreign Bank Account Reports.**

Action Item: Carefully consider whether you should accept the role of Executor for a U.S. person (U.S. Citizens, Green Card holders, U.S. Residents, etc.).

BENEFITS FINDER – SERVICE CANADA: Additional Support may be Available

Service Canada provides a useful website, www.canadabenefits.gc.ca, which assists Canadians in obtaining a **customized list of benefits (Federal and Provincial/Territorial)** for which they may be eligible. Information that the user may provide to obtain this customized list includes:

- the individual's province or territory, age, marital status, household income;
- whether they have children;
- type of their housing;
- whether a family member is recently deceased;
- the individual's employment, health and education status; and,
- other unique factors such as whether the individual is a newcomer to Canada, interested in starting a business, or is a health care worker.

Action Item: Try the calculator to see what may be available!

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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