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PERSONAL TAX

MEDICAL EXPENSES - COSMETIC PROCEDURES

In an August 31, 2011 **Technical Interpretation**, Canada Revenue Agency (CRA) noted that medical expenses paid after March 4, 2010 for **purely cosmetic** procedures are **ineligible** for the Medical Expense Tax Credit (**METC**).

This generally includes **surgical and non-surgical** procedures purely aimed at **enhancing** an individual's **appearance**, such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening. The CRA has **posted** on its **website** some examples of procedures that will generally be **ineligible** as medical expenses at www.cra.gc.ca/gncy/bdgt/2010/mdcl-eng.html.

CHILDREN'S ART TAX CREDIT (CATC)

Commencing in **2011** a non-refundable **CATC** will be available to **parents of children** who are **under age 16** at the beginning of the year, or **age 18** if the child is **disabled**. The **CATC** is based on **15% of eligible expenses** paid for the cost of registration or membership in a **prescribed program** of artistic, cultural, recreational, or development activity. The **maximum 15% CATC** is based on **\$500**. This is **similar** to the **Fitness Credit** introduced in 2010. Therefore, a parent is eligible for a maximum **\$150, 15% tax credit (arts, \$500 and fitness, \$500)**.

Eligible **CATC** programs include:

- a weekly program of a minimum of **eight consecutive weeks** duration in which a minimum of 90% of all activities are eligible activities or, offered by an **organization** where a **50% eligible activity test** is met; and
- a program of a minimum of **five consecutive days** in which more than 50% of the activities are eligible.

A program that is part of a **school curriculum** will **not** be eligible.

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Eligible CATC activities will include development of creative skills or expertise in **artistic or cultural** activities; providing of substantial focus on **wilderness and a natural environment**; helping children develop and use particular **intellectual skills**; structured interaction among children where supervisors teach or help children develop **interpersonal skills**; and providing enrichment or tutoring in **academic subjects**.

EMPLOYMENT INCOME

HIRING CREDIT FOR SMALL BUSINESS (HCSB)

The **2011 Federal Budget** created a **one-time hiring credit** for small business. The **HCSB** gives small businesses **relief** from the **employer's share** of Employment Insurance (**EI**) premiums paid in **2011** by paying up to \$1,000, based on the **increase** in an employer's EI premiums paid in 2011 over those paid in 2010.

You are **eligible** for this credit if you meet **all** of the following conditions:

- you **deducted EI premiums** from the remuneration you paid to your employees, or paid the worker's share of EI premiums for barbers, hairdressers, fishers or drivers of taxis and other passenger-carrying vehicles, and you remitted these premiums (along with your share of EI premiums) to your payroll (RP) account;
- you reported the income and deductions on a **T4 Slip** and filed this information on your RP account for **2010 and 2011**;
- the total of **employer EI premiums** you paid for **2010** was **\$10,000 or less**; and
- your total employer EI premiums increased in 2011.

If you are eligible, the **CRA** will **automatically calculate** the amount of your **HCSB** using the EI information from the T4 Slips you filed with your 2010 and 2011 T4 Information Returns. The amount to be credited to your payroll account will be no more than \$1,000.

EMPLOYMENT INSURANCE FOR NON-ARM'S LENGTH EMPLOYEES

In an October 20, 2011 **Tax Court of Canada** case, the major shareholder's **daughter** worked for the corporation and the corporation **successfully** argued that the **salary** was **not** subject to **Employment Insurance** because the **Employment Insurance Act** **excludes non-arm's length** situations where the terms and conditions of the employment are **not substantially similar** to contracts of employment with arm's length people.

In an October 3, 2011 **Tax Court of Canada** case, the individual was the **spouse** of the owner of the corporation and claimed that her employment was subject to EI and, therefore, made an application for Employment Insurance.

The Court again concluded that her employment was **not insurable** on the basis that **her terms and conditions of employment** were **not the same** as an arm's length person.

BUSINESS/PROPERTY INCOME

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In December, 2011, CRA issued **Guide RC4467** which notes that:

- In 2010 the **SR&ED Program** provided approximately **\$3.5 billion** of tax assistance for over **21,000**

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claimants. Of these, **75%** were **small businesses**.

- The SR&ED Program provides financial assistance through the form of **refundable investment tax credits**, and a reduction of **taxes payable**, or both.
- The SR&ED Program is available to **any business** operating and doing **SR&ED** in Canada. Any business that is involved in **basic** or **applied research**, or in developing **new or improved** materials, devices, products, or processes may be **eligible** under the SR&ED Program.

To determine if your work meets the SR&ED requirements, see the **CRA Eligibility Self-Assessment Tool** at www.cra.gc.ca/sred-assessment.

- Also, CRA has a First Time Claimant Service; a Pre-Claim Project Review Service (provides a preliminary opinion on the eligibility of projects for SR&ED tax incentives); and the **Account Executive Service** (provides a designated contact person who will be available to answer your questions on SR&ED).

For more information see www.cra.gc.ca/sred.

OWNER - MANAGER REMUNERATION

DIRECTOR LIABILITY

In an April 21, 2011 **Federal Court of Appeal** case, the Federal Court reviewed the “**due diligence defence**” and found the **taxpayer/director personally liable** with respect to unpaid **GST/HST** and **source deductions** and noted that:

- The director’s efforts should be to prevent failures.
- There is a need for stronger corporate internal controls and director’s meetings to ensure that the statutory obligations under the **Income Tax Act** and the **Excise Tax Act** are met.
- This is a **warning** to directors that they must meet **statutory obligations** with respect to source deductions and GST/HST remittances.

INDIVIDUAL PENSION PLANS

An **Individual Pension Plan (IPP)** could be used as a replacement **retirement savings vehicle** for, say, a Registered Retirement Savings Plan (**RRSP**). Some **points to consider** include:

1. An RRSP may work well for younger employees however, **older employees** that have **corporations** may prefer a defined benefit type of Pension Plan such as an **IPP** to provide **current contributions** that are in excess of the RRSP deduction limit.
2. An **IPP** may also allow the employer to make **past service contributions**.
3. An employee must receive **T4-type** (T4 or T4PS) **employment income** from an employer as compensation for **IPP pension contribution** purposes. For example, self employment, dividend and interest incomes are not pension eligible.
4. An ideal IPP candidate is between age 50 and 71, is a shareholder of an owner-managed corporation or a

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senior executive, is of high net worth and highly compensated, desires significantly higher contributions than an RRSP, has significant profits and cash flows to meet corporate-funded IPP obligations, has no need to access the IPP fund except in the form of a pension, and has no need to borrow against IPP assets.

ESTATE PLANNING

RRSPs/RRIFs - ANTI-AVOIDANCE RULES

The **2011 Federal Budget** enhances the existing **RRSP/RRIF Anti-Avoidance Rules**. For example, the new rules would require the **income received** by an RRSP/RRIF (including capital gains) from a “**prohibited investment**” (for example, shares in which the annuitant or a related person owns 10% or more) to be **100% taxed**. Also, the Budget proposes a **special tax** on the fair market value of a “**prohibited investment**”.

This is **complicated legislation** and needs a **special review** before application to a fact situation. A **special election** could be made **before July, 2012** for pre-March 22, 2011 prohibited investments.

RRSP SCAM

In a November 23, 2011 **Tax Court of Canada** case, the **issue** was whether CRA was correct in reassessing the Appellants to include in **income** the amounts that they paid for **corporate shares** acquired using funds in their **self-directed RRSP** accounts for 2001 and 2002.

The Appellants were **defrauded** by being persuaded to transfer their existing registered funds into new, self-directed registered accounts, and then purchase **corporate shares** that were **not qualified investments** and that had **no value** at the time of purchase.

Taxpayer Loses - The amounts were required to be included in **income**. However, the Court **deleted** the **gross negligence penalties** on the basis that the Appellants were **innocent victims**.

TAX-FREE SAVINGS ACCOUNT (TFSA)

In the Fall of 2011, many taxpayers received a **TFSA over-contribution package** concerning their **2010 TFSA contributions**. For example, if a person made a contribution in 2010, withdrew it, and then **re-contributed** it in the **same year** or, withdrew funds and contributed them into another TFSA, there could have been a **1% per month penalty**.

If a taxpayer has received a TFSA over-contribution package, they may **ask** the **CRA** to **review** the file and consider **waiving the penalty**. The maximum TFSA contribution as at January 1, 2012 is \$20,000.00.

INTERNATIONAL

U.S. CITIZENS IN CANADA - AN UPDATE

On December 7, 2011 the IRS released a fact sheet entitled “Information for U.S. Citizens or Dual Citizens Residing Outside the U.S.”. This seven point release provides a commentary and examples on the filing obligations, processes, and related penalties for U.S. Citizens residing abroad that are delinquent in their filings (example, in Canada). These **filing requirements** could apply to persons **born in the U.S.**, or, in some cases, children of people born in the U.S. and, **Green Card** holders.

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.

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