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PERSONAL TAX

CHILDREN'S ARTS TAX CREDIT (CATC)

In a May 24, 2012 ***Technical Interpretation***, CRA notes that an ***optional annual fee*** paid to a fund organized by the Music Parents Society as an ***optional school trip***, would be an ***eligible CATC*** if the membership in the Organization is not part of a school's curriculum, the membership lasts eight or more consecutive weeks, and more than 50% of the activities that the Organization offers to children include a significant amount of artistic, cultural, recreational or developmental activities.

FEES PAID TO A MONTESSORI SCHOOL

In an April 12, 2012 ***Technical Interpretation,*** CRA notes that if an ***educational institution*** offers a ***full-day kindergarten program***, the fees payable for that program are ***not deductible*** as a child care expense *(CCE).* **However, if an educational institution provides a** *separate or additional program* ***of*** *child care* **as well as a half-day or alternate-day kindergarten program, the** *part of the fees* **related to the** *separate child care program* **may qualify as a** *CCE.*

EMPLOYMENT INCOME

PER DIEM MEAL ALLOWANCE

In a March 28, 2012 ***Technical Interpretation,*** CRA noted that an ***employer-provided meal allowance*** will ***not*** be ***taxable*** where the following conditions are met:

- the allowance is a ***reasonable amount***;
- the allowance is received for travelling ***away from the municipality and the metropolitan area*** where the employer's establishment, at which the employee ordinarily worked or to which the employee ordinarily reported is located; and
- the travelling is done in the performance of the duties of an office or employment.

CRA's current administrative policy provides that in some circumstances, employer-provided ***travel (including meal) allowances*** paid in respect of travel ***within a "municipality" or "metropolitan area"*** can be ***excluded*** from income. CRA notes that, as a general rule, an employer can use the overtime meal allowance of ***$17*** as a ***reasonable amount*** per meal.

CRA GIFTS AND AWARDS PROGRAM

In a May 10, 2012 ***Technical Interpretation*** CRA notes that under certain conditions, ***gifts and non-cash awards*** received by an employee may ***not*** be a ***taxable benefit***. However, the policy ***does not apply*** to gifts and awards in ***cash or cash equivalents***. CRA also considers that ***reimbursements*** by the employer of any ***property purchased by the employee, or a service paid by the employee, is a cash equivalent***. This is also the case for a property or service chosen by the employee but purchased by the employer (unless the number of goods or services that can be selected is very limited). Similarly, CRA generally considers that where an employee can ***earn points*** and exchange them for items of a catalogue, this is ***not*** covered by the ***tax-free*** policy on awards and gifts.

BUSINESS/PROPERTY INCOME

REAL ESTATE AGENT

In a March 19, 2012 ***Technical Interpretation*****,** CRA notes that if a ***real estate agent*** can show that ***rebates*** in the form of ***gifts or cash*** offered to clients were for the purpose of ***gaining or producing income*** from his/her business (to increase sales, for example) the payment of the rebate would ***likely be deductible*** in computing income. However, CRA notes that it would probably ***not*** be ***deductible*** if it was paid to a ***non-arm's length customer*** on the basis that it would be regarded as a ***personal expense***.

JOINT VENTURE (JV)

In a June 6, 2011 Technical Interpretation, CRA announced that the withdrawal of its administrative policy for JVs which permitted the participants of the JV to establish a fiscal period for the JV that differed from the fiscal periods of the participants where the participants had different fiscal periods and there was a valid business reason that justified a separate fiscal period for the JV. Taxpayers who had previously entered into JV arrangements would ***no longer*** be eligible to ***compute income*** as if the ***JV*** had a ***separate fiscal period***.

ONLINE TRADING

In a March 29, 2012 ***Tax Court of Canada*** case, the **issue** was whether ***CRA*** was correct in ***disallowing*** the taxpayer's claim for ***business losses*** on his ***online share trading activities*** for the 2001, 2002, 2003 and 2004 taxation years on the basis that they were on account of capital.

Taxpayer Wins!

The Court noted that:

1. The Appellant has met his onus of showing he was engaged in an ***adventure in the nature of trade***.

2. The CRA was correct in arguing that the taxpayer lacked the special knowledge necessary to make him a "trader", however, the telling feature of the Appellant's conduct is the ***feverish nature*** of his ***trading activities***.

3. The Court noted that ***if the tables were turned*** and he had managed to make the profits he dreamed of, the Court could not for one moment imagine CRA characterizing his activities as being ***consistent with an intention to acquire the shares as a long-term capital investment***.

4. Whenever the Appellant did have some funds, he was ***back online trading***.

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In two recent ***SR&ED cases***, the Court found that ***SR&ED cannot be claimed unless*** it is established that the SR&ED was involved in ***overcoming a technical uncertainty*** that could ***not*** be ***resolved through routine test*** engineering.

SKI CONDOMINIUM - RENTAL LOSSES

In a February 27, 2012 ***Tax Court of Canada*** case, the taxpayer bought a unit in a condominium building at a ***ski resort*** near Callingwood, Ontario and stated that she purchased the unit in part because ***she wanted to ski***, but the ***main interest*** was the possibility of earning ***rental income***.

The Court generally allowed the rental losses claimed and noted that:

1. It was ***not unreasonable*** for the Appellant to believe that the rental of the unit would not only pay the carrying costs, mortgage payments, property taxes and other fees but, also ***make some profit***.

2. It is important to determine whether the taxpayer has an ***activity*** carried out in a ***commercial manner***. A determination by the ***CRA*** should ***not*** be used to ***second-guess*** the ***business acumen*** of the taxpayer. It is the ***commercial nature*** of the activity to be assessed, and not the taxpayer's business acumen.

Therefore, the ***losses were allowed*** as a deduction with the ***exception*** that some of the expenses were ***capitalized*** (***capital cost allowance*** was allowed).

SELF-EMPLOYED VS. EMPLOYEE

In a May 30, 2012 ***Tax Court of Canada*** case, the issue was whether the ***child care provider*** was an ***employee*** (contract of service) or ***self-employed*** (contract for services).

The ***Court*** found that the ***child care provider was an employee*** and noted that the work was executed under a ***contract of service*** because of its regularity, continuity and permanent work; supervision; the beginning and end of work decided exclusively by the payer; the lack of autonomy of the guardian; and exclusivity.

Also, the form of compensation, the power to intervene and/or unilateral control held by the payer and inequality in a contractual relationship all indicated an ***employment relationship***. The parties were ***not equal*** in negotiations. Therefore, the ***parents*** were required to ***remit Employment Insurance (EI)*** on behalf of their ***employee*** and, the ***employee*** was entitled to ***apply*** for ***EI***.

ESTATE PLANNING

NON-PROFIT ORGANIZATIONS (NPO) - SPORTS ORGANIZATION

In a March 30, 2012 ***Technical Interpretation***, CRA notes that the ***taxable income*** of an Organization that is a Club, Society or Association is ***exempt*** from tax for a period throughout which the Organization meets ***all*** of the following ***conditions***:

- it is ***not*** a ***charity***;
- it is organized and operated ***exclusively*** for social welfare, civic improvement, pleasure, recreation or any other purpose ***except profit***; and
- it does ***not*** distribute, or otherwise make available for the ***personal benefit*** of a member or shareholder, any of its income, unless...

In this case, CRA was advised that the ***Association earned income*** from a ***variety of sources*** including ***sponsorships and advertising rights***, both throughout the year and previously. The Association had a ***large increase in income*** which resulted in a ***significant increase*** in ***Members' equity***. The increase in Members' equity has ***remained steady*** since that time. In ***each year*** under review, the Association recorded a ***surplus*** which was distributed evenly to the Members' accounts.

CRA noted that ***Paragraph 149(1)(l)*** does ***not*** mean that an Organization ***cannot earn a profit***; it can, but the ***profit*** must be ***incidental*** and must result from activities ***undertaken to support*** the Organization's not-for-profit objectives. The earning of profit cannot be, or become, a purpose of the Organization.

In this case, the Organization provided ***financial assistance*** to its Members out of ***surplus*** derived from third parties. CRA noted that these amounts ***do not appear*** to be ***incidental*** in relation to the overall income and scope of operations, particularly when it appears that the Association is generating a surplus on a regular basis. Additionally, all of this income was received from ***third parties*** and was ***actively pursued*** through the use of an agency.

CRA concluded that the ***Association*** was likely operating for a ***profit purpose*** (together with its not-for-profit purposes) and its ***NPO status*** is in ***jeopardy***.

GST/HST

GST/HST Notice No. 270 (March 2012) provides 18 pages of Questions and Answers with respect to the ***elimination of the HST*** in British Columbia effective ***April 1, 2013***.

ONATRIO SURTAX

On April 23, 2012, Ontario Premier Dalton McGuinty announced that Ontario will introduce a ***temporary 2% surtax*** on individuals earning ***more than $500,000 a year***.