McLAREN TREFANENKO inc.
CERTIFIED GENERAL ACCOUNTANTS

350 - 522 Seventh Street
New Westminster, BC V3M 5T5

Phone 604.524.8688
Facsimile 604.526.0455
Website www.mti-cga.com

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PERSONAL TAX

MEDICAL EXPENSES - TRAVEL

In a November 8, 2012 Tax Court of Canada case, CRA disallowed as a medical expense $14,883 of travel costs related to 101 round trips that Mr. Jordan made from Weyburn to Regina to assist his wife in recovering from an aneurysm.

Taxpayer wins

The Court allowed the deductions on the basis that they were incurred while his wife was receiving medical treatment and, therefore, should not be restricted to just the initial trip from Weyburn to Regina.

DISABILITY TAX CREDIT

In a December 18, 2012 Tax Court of Canada case, the Court determined that the Appellant was not entitled to a Disability Tax Credit for the 2010 taxation year in respect of her diagnosis under Attention Deficit-Hyperactive Disorder and DSM-IV Learning Disability.

The Court noted that there is no doubt that the difficulties experienced by the Appellant are not insignificant, however, they are not sufficiently serious to meet the definition of mental or physical impairment required to claim the credit.

MOVING EXPENSES AND REIMBURSEMENTS

When taxpayers move, they commonly incur significant costs, many of which are deductible as moving expenses, including:

- Transportation and storage costs (packing, hauling, in-transit storage and insurance) for possessions and household contents;
- Reasonable travelling costs (vehicle expenses, meals, accommodation) to move you and your family;
- Temporary living costs near the old or new location (meals, accommodation) for up to 15 days;
- Lease cancellation costs;
- Temporary home costs while trying to sell your vacant residence (interest, property taxes, insurance premiums, heat and utilities) after you have moved out to a maximum of $5,000;
- Transaction costs of selling of your old house (real estate commissions, advertising, legal fees, and mortgage penalties);
- Transaction costs of buying a new house (legal fees and land transfer taxes excluding GST/HST) if the old house is sold due to the move;
- Costs incidental to the move (connecting and disconnecting utilities, changing legal documents such as a driver's license or automobile registration).

EMPLOYMENT INCOME

TAXABLE BENEFIT - EMPLOYER PROVIDED MOTOR VEHICLES REQUIRED TO BE TAKEN HOME AT NIGHT

It was noted by the CRA in Income Tax Technical News No. 40 (June 11, 2009), that travel from home to the office for some employer provided motor vehicles may still be considered taxable benefits even if the vehicles are required to be taken home and prohibited from any other personal use.

It should be noted that when calculating the benefit, the use of these vehicles is not considered personal if the employee proceeds directly from home to a point of call or returns home from that point of call.

DOOR PRIZES

In a February 4, 2013 Technical Interpretation, CRA was asked about door prizes received by attendees at a company social event where every attendee received a door prize.

CRA indicated that their tax-free $500 gifts and awards policy would apply to gifts received by the employee, the employee's spouse, and any other non-arm's length person.

The questioner suggested that gift cards may be given. CRA noted these near cash gifts would not be included under their gifts policy. Therefore, the value would be taxable to the employees. CRA referred to the detailed discussion of their gifts and awards policy at www.cra.gc.ca/gifts.

BUSINESS / PROPERTY INCOME

SALE OF FAMILY HOMES

In a September 6, 2012 Tax Court of Canada case, the taxpayer was a police officer who had three unreported sales of family homes built in 2004, 2005 and 2007 in which CRA assessed business income of $31,068, $44,729 and $29,872 and also assessed gross negligence penalties.

For the three properties, the ownership period between the date of purchase of the land and the date listed for sale varied between 67 and 110 days.

Taxpayer loses

The Court found that these homes were acquired and built with the intention of selling and were, therefore, business income and, that there was gross negligence in not reporting the income.

2013 FEDERAL BUDGET

Some of the provisions in the 2013 Federal Budget include:

FIRST-TIME DONOR'S SUPER CREDIT (FDSC)

Budget 2013 proposes a temporary FDSC providing an additional 25-per-cent tax credit for a first-time donor on up to $1,000 of donations.

A first-time donor will be entitled to a 40-per-cent federal credit for donations of $200 or less, and a 54-per-cent federal credit for the remaining portion, not exceeding $1,000.

An individual will be considered a first-time donor if either the individual or the individual's spouse or common-law partner has not claimed a Charitable Donation Tax Credit in any taxation year after 2007.

The FDSC will be available in respect of donations of cash made on or after Budget Day (March 21, 2013) and may be claimed only once in the 2013 through 2017 tax years.

TAXES IN DISPUTE AND CHARITABLE DONATION TAX SHELTERS

Budget 2013 proposes to allow the CRA to collect 50 per cent of the disputed tax, interest or penalties where an objection has been filed with regards to a disallowance of a deduction or tax credit claimed in respect of a tax shelter that involves a charitable donation. Normally, collection action cannot be taken while amounts are under objection or appeal. This measure will apply in respect of amounts assessed for the 2013 and subsequent taxation years.

LEVERAGED INSURED ANNUITIES (LIA) AND 10/8 ARRANGEMENTS

A LIA involves the use of borrowed funds in connection with a lifetime annuity and a life insurance policy, both of which are issued on the life of an individual.

A 10/8 Arrangement generally involves the borrowing of funds secured by a life insurance policy, or investment account under the policy, whereby the rates on the loan and the investment are tied to each other.

Budget 2013 proposes to eliminate unintended tax benefits by introducing rules for "LIA policies" and "10/8 arrangements".

Budget 2013 also proposes to alleviate the income tax consequences on a withdrawal, from a policy relating to a 10/8 arrangement, if the withdrawal is made before January 1, 2014.

RESTRICTED FARM LOSSES (RFL)

Budget 2013 proposes to codify the chief source of income test whereby other income must be subordinate to farming in order for farming losses to be fully deductible against income from those other sources.

Budget 2013 also proposes to increase the RFL limit to $17,500 of deductible farm losses annually, being the first $2,500 loss plus half of the next $30,000.

These measures will apply to taxation years that end on or after Budget Day.

THE CANADA JOB GRANT

Businesses with a plan to train Canadians for an existing job or a better job will be eligible to apply for a Canada Job Grant. The Grant will provide access to a maximum $5,000 federal contribution per person towards training at eligible training institutions.

As there are various bodies involved, negotiations must still take place to finalize the detailed design of the Grant.

EXTENSION AND EXPANSION OF THE HIRING CREDIT FOR SMALL BUSINESS

Budget 2013 proposes to expand and extend for one year the temporary Hiring Credit for Small Business. This credit would offset up to $1,000 of the increase in an employer's 2013 Employment Insurance (EI) premiums over those paid in 2012. Only employers with total EI premiums of $15,000 or less in 2012 qualify.

STOP INTERNATIONAL TAX EVASION PROGRAM

The CRA will pay rewards to individuals providing information on major international tax non-compliance to the CRA of up to 15 per cent of federal tax collected if reassessments exceed $100,000 in federal tax.

CANADA – U.S. INFORMATION EXCHANGE & FATCA

Budget 2013 confirms the Government is engaged in negotiations with the U.S. for an agreement to enhance reciprocal information exchange under the Canada – United States Tax Treaty.

The agreement would include information exchange provisions in support of the United States Foreign Account Tax Compliance Act provisions.

OWNER-MANAGER REMUNERATION

DIRECTOR LIABILITY

In an October 16, 2012 Tax Court of Canada case, the issue was whether the Appellant, as a director of the corporation, was personally liable for the unremitted GST of $2,512.

Taxpayer wins

The Court noted that he had effectively lost control over the corporation's affairs.

It was also noted that the individual is not necessarily personally liable if external constraints (such as psychological, economic and social control) were such that a reasonable person who was a victim of the same control would have done nothing.

ESTATE PLANNING

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It is commonly advised that the RRSP/RRIF holder designate a beneficiary of the plan. Advantages of this approach include:

- The funds transfer directly, avoiding probate.
- The status as a "refund of premiums" requires no elections. Refunds of premiums allow a tax-deferred transfer of funds.
- Reporting on transfers to a surviving spouse or common law partner can be avoided.
- The funds are not exposed to liabilities of the deceased's Estate (except income taxes relating to the funds when the Estate does not have enough cash to cover the tax bill).
- It avoids the risk that a beneficiary will not sign the election, thereby requiring the Estate to pay tax on the account value or, that the opportunity is overlooked entirely by the Executor.

However, there may be advantages to leaving funds to the Estate itself, such as:

- The funds are available to the Estate to pay the deceased's final income taxes that arise from the the RRSP/RRIF. This helps to ensure equitable treatment of all beneficiaries.
- Enhanced planning opportunities, as the elections can be used to determine the precise amounts to be reflected as a "refund of premiums", or reported on the terminal tax return.
- The elections can also be used to allow the Executors flexibility to determine how any "refund of premiums", and other assets, will be allocated between eligible beneficiaries. This could be used to direct the "refund of premiums" to lower income beneficiaries and/or beneficiaries best able to utilize rollovers while directing other assets to other beneficiaries.
- Funding a Testamentary Trust. This may be especially desirable if no "refund of premiums" and/or rollovers are available (or if the plan holder does not want that amount of funds left to those beneficiaries).

Professional advice may be needed in this area.

GST/HST

INPUT TAX CREDITS (ITCs) - TRAVEL ALLOWANCES

In a January 17, 2013 Tax Court of Canada case, ITCs of $126,339 were claimed with regards to travel allowances paid to employed sales representatives for the estimated number of kilometers driven.

Taxpayer loses

The Tax Court noted that:

1. The allowances paid were based on an estimate of the kilometres to be travelled and not on the actual kilometres driven for business.
2. The Excise Tax Act (ETA) permits ITCs related to non-taxable allowances, however, the allowance must be based on the actual number of kilometres driven.
3. The requirements were not met, and the ITCs were not allowed.