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## PERSONAL TAX

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### 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.

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## EMPLOYMENT INCOME

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

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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).

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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

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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).

### **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.

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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

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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 (such as California) have a withholding tax on the selling price of real property.

**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. during the year, they may still be considered a U.S. resident based on the Substantial Presence Test.

To meet this test, the individual must spend 31 days in the U.S. during the current year and a total of 183 days or greater as calculated by the following formula:

- 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.

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.

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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