TAX, TIPS & TRAPS
FIRST QUARTER

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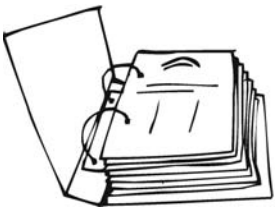
This publication is a high-level summary of the most recent tax developments applicable to business owners, investors, and high net worth individuals. Enjoy!

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



- A **review** of the **Income Tax Act** is to be completed by June 30, 2017. The Federal Government has noted it plans to implement initiatives aimed at simplifying the system.
- Does your corporation make **sales to** other **corporations** in which you or another **relative has an interest**? If so, your access to small business tax rate may be affected.
- Curious about how the new **federal Liberal** Government has **performed** against their election promises? How about what may be forthcoming? The website, www.trudeaumetre.ca, tracks the **progress on their promises**. It notes whether the promises have been achieved, broken, in progress, or not yet started.
- How will the **2016 Federal Budget tax changes** impact you? Find out using this Parliamentary Budget Officer calculator found at http://www.pbo-dpb.gc.ca/en/Tax%20Calculator%20Tool.

PRINCIPAL RESIDENCE EXEMPTION (PRE): Changes to Reporting

On October 3, 2016, Minister of Finance Bill Morneau announced a number of measures to address **perceived abuses of the PRE**. The PRE essentially allows gains experienced upon the sale of a principal residence to be tax free. Here are some of the major changes.

Reporting the Sale of a Principal Residence

While the legislation has always required that property be designated as a principal residence, CRA has historically waived the requirement for any filings or disclosure where the entire gain was exempt due to the PRE. However, effective for sales of property eligible for the PRE occurring on January 1, 2016 and later, individuals will be required to **report the sale in** their personal income tax return. **Basic information** such as the **year of acquisition**, **proceeds of disposition**, and the **address of the property** must be disclosed. This reporting may also be required where the property has not been sold but there is a deemed disposition. A deemed disposition may occur, for example, when a personal home is converted into something else, like a rental property.

Late Designations
If the disposition is not properly and timely reported, the PRE may not be available. However, CRA does have the discretion to **accept a late designation**. If the late submission is accepted, CRA also has the option to levy a **penalty** ($100 per month late, up to a maximum of $8,000). The penalty may or may not be issued depending on the circumstances.

Extended Assessment Period
A further proposal would provide CRA with the authority to assess taxpayers **beyond the normal assessment limitation period** (generally 3 years) when the **disposition of real estate** is not appropriately reported in the tax return. In other words, there would be **no time limit** for such an assessment. However, CRA's ability to reassess will be **limited to only the unreported disposition of the real property**.

Note that this extended reassessment period is not restricted to real estate used as a principal residence – most real estate counts. If the tax return is later amended to report the disposition, CRA's ability to reassess will end approximately three years after the adjustment or amendment is filed.

This amendment applies to taxation years that end on or after October 3, 2016.

Action Item: If disposing of any real estate, discuss with an advisor as to how this should be reported on your tax return.

EMPLOYMENT EXPENSES: Requirements for Deduction

In a May 26, 2016 **Technical Interpretation**, CRA summarized the **conditions that must be met** in order for an individual that earns employment income to **deduct employment expenses**. Deductible expenses are limited to only a select group described in the Income Tax Act.

Generally, an employee may deduct costs of employment related expenses if:

- under the **contract of employment**, the employee had to provide and pay for the expenses;
- the employee does **not receive a non-taxable allowance** for the expenses;
- the **employer does not, or will not, repay** the employee for the expenses; and
- the employee keeps with his/her records a completed and signed copy of the appropriate form(s) (i.e. Form T2200**,** Declaration of Conditions of Employment, or Form TL2**,** Claim for Meals and Lodging Expenses).

Additional conditions must be met to deduct certain types of expenses (such as, for example, travel).

For more information on employment related expenses, see www.cra.gc.ca/employmentexpenses, Chapters 3 and 4 of Guide T4044, Employment Expenses 2015.

Action Item: Employers – ensure that Form T2200 is properly completed and distributed or employees may be denied employment expense claims. Employees – obtain Form T2200 from your employer as early as possible.

MEAL REIMBURSEMENTS: A Taxable Benefit?

In a June 10, 2016 French **Technical Interpretation**, CRA commented on whether an employer had conferred a **benefit to an employee** where the employee was reimbursed for their meal expenses.

Generally, an employee must **include** the **value of any benefits** received or enjoyed in their taxable income. CRA normally considers a taxable benefit to be conferred when:

- the benefit provides an **economic advantage** to the employee;
- the benefit is **measurable and quantifiable**; and
- it **mainly benefits the employee** (or a non-arms' length person) and not the employer.

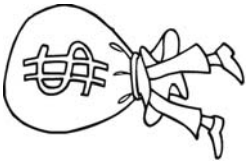
If the meal is reimbursed while the employee is **travelling within the municipality or metropolitan area** of the establishment of the employer, the **employee** is generally considered the **primary beneficiary**. However, in certain cases, the reimbursement can be excluded from the employee's income. For example, if the **main purpose of the reimbursement** is to ensure that the **employee's functions are carried out more effectively** as part of a shift, then the **employer** could be the one who **mainly benefits**.

Meal reimbursements when the employee travels **outside the municipality** of the employer in the performance of their duties is generally considered to primarily **benefit the employer**.

The fact that the employer charges the client for the reimbursement is not a factor in this determination.

Action Item: Consider the tax ramifications when developing and implementing a meal reimbursement policy.

TAXPAYER RELIEF: Financial Hardship



CRA may grant relief from penalties and interest in cases where the timely satisfaction of a tax obligation was not completed due to:

- extraordinary circumstances;
- actions of the CRA; or
- inability to pay or financial hardship.

In a March 31, 2016 **Federal Court Judicial Review**, the taxpayer appealed a decision by CRA to refuse relief on **penalties and interest.** In this case, the taxpayer argued that the CRA agent did not reasonably appreciate the taxpayer's **financial difficulties**.

The Court agreed with CRA that the concept of financial difficulties for a person is a **financial insecurity or lack of what is necessary to meet basic living needs** (that is food, clothing, housing, and reasonable non-essential elements).

As it appeared that the taxpayer was able to **repay the outstanding tax arrears**, **without** having an **undue impact** on a **lifestyle** of a relatively affluent Canadian taxpayer, CRA's decision to deny the request was deemed reasonable.

CRA has also noted that relief may be granted:

- when collection had been suspended due to an inability to pay and substantial interest has accumulated or will accumulate;
- when a taxpayer's demonstrated ability to pay requires an extended payment arrangement. Consideration may be given to waiving all or part of the interest for the period from when payments start until the amounts owing are paid, as long as the agreed payments are made on time and compliance with the Act is maintained.

Action Item: In addition to financial hardship, some of the more common reasons why taxpayer relief may be granted include: natural or human-made disaster; death/accident/ serious illness/emotional or mental distress; or civil disturbance. If one of these situations apply, an application for interest and penalty relief may be available. Note that taxes would still be owing.

PAYROLL ADVANCES: Tax Consequence

In an April 26, 2016 **Technical Interpretation**, CRA opined that where an employer provides a **payroll advance** to an employee, the amount is **not generally considered to be a loan**. A salary advance is a payment for salary, wages or commissions that an employee is expected to earn in the performance of future services. These amounts are generally included in the **employee's income** in the **year the advance is received**.

If a **repayment by the employee** is required, a **deduction is available** in the tax year in which the repayment was made. The deduction cannot exceed the advance that was previously included in the employee's income from employment.

Action Item: When providing an advance to an employee, ensure that the employee clearly understands the tax implications.

OBJECTIONS: Not so Fast

When filing an objection to a CRA reassessment, one of the most frequently-posed questions is "How long will it take?". The answer, according to the Auditor General, is "too long".

On November 29, 2016, the **Auditor General** released a report to Parliament focusing on the **effectiveness and timeliness** of the **objection process**.

Length of Process
For the five-year period ending March 31, 2016, CRA took the following numbers of days, on average, **to resolve objections** from the time they were filed by the taxpayers:

- **143 days** for **low**-complexity objections (about 61% of total objections for the period);
- **431 days** for **medium**-complexity objections (about 37% of total objections for the period); and
- **896 days** for **high**-complexity objections (about 2% of total objections for the period).

On average, CRA did not assign an objection to an appeals officer until 150 days after the taxpayer had mailed the notice of objection.

CRA's performance was also **compared to six other administrations** using 2009 data. Canada took **276 days compared** to an average of **70 days** for the other six countries.

It was also noted that the tracking system for timing the process was not sufficiently accurate or complete.

Objection Decision Results
Of the objections accepted and processed by CRA, **65%** were **decided in favour** (in whole or part) **of the taxpayer**. 0.6% of objections resulted in an **increase in income tax** owed.

Next Steps
In the Fall of 2016, CRA commenced a **review of its objections** process. As an immediate response, CRA indicated

that it will implement the standard to respond to taxpayers on low-complexity objections within 180 days, 80% of the time. Also, beginning in the 2017-2018 year, as part of the **initial step** when objections are received and screened, **taxpayers will be contacted** (if necessary) to **provide missing information** to ensure the file is complete when assigned for resolution.

Action Item: As it will likely take a long time to complete an objection, a significant amount of interest on the tax liability may accumulate. Consider making an earlier payment to reduce the interest cost in the event that the objection is not successful. If it is successful, the CRA will pay interest to the taxpayer, albeit at a lower rate.

CRA STRATEGIES ON OFFSHORE TAX EVASION: The World is Shrinking

A recent article reported that CRA is reviewing **every electronic fund transfer** over $10,000 from Canada to **four foreign jurisdictions** per year. The first two targets were the **Isle of Man** and the **Island of Guernsey**, with **two more undisclosed** jurisdictions to be reviewed by March 31, 2017. CRA has started **audits of 166 high-risk taxpayers** and sent **over 1,000 "nudge" letters** to **lower risk taxpayers**. For 2017-2018, CRA plans on reviewing about **100,000 fund transfers** to **four other undisclosed jurisdictions**.

The article also noted that the **Offshore Tax Informant Program** received over **3,000 tips** as of October 31, resulting in almost **200 audits** and **124 active files** under review.

In addition to these activities, a November 14, 2016 Huffington Post article indicated CRA identified **2,600** documents with a **Canadian link**, opened **85 investigations** into Canadians, and has commenced **60 audits** with respect to the Panama Papers.

Action Item: If transferring funds offshore, retain appropriate documentation in case of CRA review.

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