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IN THIS ISSUE

PERSONAL TAX

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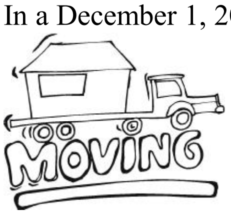
MEDICAL EXPENSES - COSMETIC PROCEDURES
In an August 31, 2011 **Technical Interpretation**, Canada Revenue Agency (CRA) noted that medical expenses paid after March 4, 2010 for **purely cosmetic** procedures are **ineligible** for the Medical Expense Tax Credit (**METC**).

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**.

MOVING EXPENSES
In a December 1, 2011 **Tax Court of Canada** case, the taxpayer **worked** for Boehringer Ingelheim Ltd. (B). In 2007 the taxpayer accepted a **promotion** and he determined that he would **need to move closer to his place of work** in Burlington, Ontario. The Appellant moved from Toronto to Oakville and there is no dispute that the **new residence is 40 kilometres** closer to his work than his former residence.



Taxpayer Wins!
The **Court allowed** the **moving expenses**.

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.

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.**

Tax Tips & Traps

For **more information** see the Children's Arts Tax Credit (**CATC**) Questions and Answers on the CRA website.

NATURAL PERSON/SOVEREIGN PERSON
In an October 20, 2011 **Tax Court of Canada** case, the taxpayer was assessed **gross negligence penalties**, **late filing penalties**, **interest** and **taxes** for the years **1999 to 2001** for **unreported income**.

In this case, the **Appellant argued** that he is a "**sovereign person**" and cannot be taxed unless there is contract between him and the government. The **Court** found that this **argument** is **without merit**.

EMPLOYMENT INCOME

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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.

Eligibility
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.

INDEPENDENT CONTRACTOR VS. EMPLOYEE - TRUCK DRIVERS
In a September 22, 2011 **Federal Court of Appeal** case, the **Tax Court** had **previously** concluded that **43 of the truck drivers** were **independent contractors** because they **signed Agreements** that indicated this intent. However, the **other 53 truck drivers** were considered to be **employees**.
Taxpayer Loses
The **Federal Court** found that **39 of the 43** independent contractors were in fact **employees**. Therefore, of the **96 truck drivers**, the **Federal Court** concluded that **92 of them** were in fact **employees**. A **significant loss** for the **Corporation**.

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

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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** 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

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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 **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

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CPP CHANGES FOR 2012
In July 14 and October 7, 2011 Releases, CRA discussed the **2012 CPP changes** and notes that if you are **under age 65** and you **work** in Canada, you and your employer will have to make **CPP contributions**. Also, working individuals who are at least **65 years of age but under 70** will be subject **to the CPP**, even if you are receiving a CPP or QPP pension, **unless** you **elect** to stop

contributing by filing Form **CPT30**.

Some **other CPP changes** include:

1. A person who **delays** receiving their **CPP** until **after age 65** will receive a **larger increase** than was available **prior to 2012**. Under the **old rules**, the CPP would be increased by **.5%** per month after age 65.

   From **2011 to 2013** this percentage will increase from **.5%** per month to **.7%** per month.

2. Individuals that **elect** to receive their **CPP before age 65** will have a **larger reduction**. **Previously** it was .5% for each month before age 65.

   The change is a **phased-in reduction** that will **increase** the early **CPP** reduction to **.6%** per month.

3. Under the old rules, an individual had to **stop working** for **two months** before they could apply to receive CPP between the ages of 60 and 65. Commencing in **2012**, this test will **no longer apply**.

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**".

Caution
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**.

NON-PROFIT ORGANIZATIONS (NPO)
In an October 24, 2011 **Technical Interpretation**, CRA took the position that the **Organization** would **not likely qualify** for **tax-free status** as a **NPO** because it is operating for a **profitable purpose**. In this case, the Organization was receiving **revenues in excess of expenses** for **advertising** undertaken by it for other persons.

CRA noted that the large amount of **retained earnings** suggest that the **Organization** has **not** operated **exclusively** for any **purpose except profit**.

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**.

WEB TIPS

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ONLINE TRANSLATOR - GOOGLE
I f you are looking for a **quick and easy translator to use**, consider going to http://translate.google.com.

This translator converts **typed-in words** and phrases in addition to **entire uploaded documents**.

CANADIAN FINANCIAL CALCULATORS

Over **40 excellent Canada specific financial calculators** can be found at: http://www.cchwebsites.com/content/calculators/indexcanadian.html

Examples of the calculators available are:
Adjustable Rate Mortgage Calculator
Interest Only Mortgage Calculator
Refinance Breakeven
Rent vs. Buy
Amortizing Loan Calculator
Student Loan Consolidation and Debt Payoff
Home Equity Loan vs. Auto loan
Future Value Calculator
Taxable vs. Tax Advantaged Investments
Retirement Nestegg Calculator
Tax Free Savings Account (TFSA) Comparison (Canadian)
Taxable vs. Tax Advantaged Investments (Canadian)

INTERNATIONAL

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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).

The release can be found at: http://www.irs.gov/newsroom/article/0,,id=250788,00.html

Editor's Comment

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.