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Tax Tips & Traps

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PERSONAL TAX

95(1)

COMMON-LAW PARTNER
In an April 11, 2011 **Technical Interpretation**, CRA notes that a "**common-law partner**" means a person who **cohabits** in a **conjugal relationship** with the taxpayer and, **either** has **cohabited** with the taxpayer for a **continuous period** of at **least one year**, or is considered to be a "**parent**" of a child of whom the taxpayer is also a parent.

This is relevant for **income tax** and other purposes.

MEDICAL EXPENSE TAX CREDIT (METC) - COSMETIC PROCEDURES
In an April 4, 2011 **Technical Interpretation**, CRA notes that **eligible medical expenses exclude** amounts paid for purely **cosmetic purposes**, **unless** necessary for **medical or reconstructive** purposes.

CRA opined that expenditures such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening would generally **not qualify** for the **METC**.

A cosmetic procedure **will qualify** for the METC if it is required for **medical or reconstructive** purposes such as expenditures that would **ameliorate** a deformity arising from a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

CRA notes that a **general statement** on a **receipt** indicating that the procedure was "not purely for cosmetic procedures" would **not**, by itself, be **determinative**. It may be necessary to provide **additional information** to determine that a cosmetic procedure qualifies for the METC such as a **description** of the nature and purpose of the procedure.

MOVING EXPENSES - NEW SALES TERRITORY
In a May 12, 2011 **Technical Interpretation**, CRA reviewed a situation where the **employee's sales territory was expanded** such that the individual's most southerly point in her sales territory was now over a **two hour drive** from her home.

CRA concluded that the **expansion** of the sales territory was **significant enough** to conclude that it resulted in a **new work location** for purposes of the **moving expense deduction**. Even though there was a **two year gap** between the time the individual began servicing her new expanded territories and her move, there was a **sufficient nexus** between the move and the commencement of employment at the new work location to **qualify** as an **eligible relocation**. Therefore, the **moving expenses** would be **deductible**.

EMPLOYMENT INCOME

95(2)

MOTOR VEHICLE EXPENSES
In an April 4, 2011 **Technical Interpretation**, CRA notes that **employees** may **deduct motor vehicle travel expenses** if required to carry out his/her employment duties **away from** the employer's **regular place** of business **and** the employee is required by the **contract of employment** to pay such

expenses. A completed **Form T2200** is also required.

EMPLOYMENT VS. INDEPENDENT CONTRACTOR STATUS

In an April 20, 2011 **Tax Court of Canada** case, the Court concluded that **this bicycle courier** was an **employee**, not an independent contractor, but noted that this is a very **fine line**.

The Court **compared** this case to a **previous case** which had found the courier to be an **independent contractor** because:

1. The courier could **sign on and off** at will.
2. The courier was **responsible for the loss** of deliveries.
3. The courier could **negotiate** a better pay rate.
4. The courier could **employ others**.
5. The pay was based on **volume**.
6. The courier admitted that he entered into something **other than an employment arrangement**.

The **Court noted** that the facts require little tweaking to shift the balance. It remains a **grey area** of the law between **independent contractor** and **employee**.

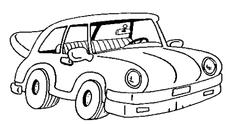
BUSINESS/PROPERTY INCOME

95(3)

ACQUISITION OF AUTOMOBILE

In a 2011 **Technical Interpretation**, CRA commented on the **tax implications** of purchasing an **automobile** which is made **available** to an **employee**.

They noted that the taxable **standby charge** to the employee is based on **2%** of the **original cost** of the automobile per month or, in the case of a **leased automobile**, **two-thirds** of the lease cost, excluding insurance, **minus** amounts **paid by the employee** to the employer for the use of the automobile.



A **reduced standby charge** is available if the vehicle is used **primarily** for business purposes (a **50% test**) and the employee's **personal use** does **not exceed 20,004** kilometres per year.

CRA noted that the **original cost** of the vehicle is the **purchase price** including options, accessories, GST/HST and PST, but does **not include**, obviously, the **trade-in**. **Additions** made to the automobile after it is purchased which are **capitalized** are also **included** (including the GST/HST and the PST). Also **included** are the **tire and battery levies**.

SIMPLIFIED LOG BOOK

CRA recently announced the introduction of a **new simplified log book** for motor vehicle expense provisions.

Self-employed individuals can now choose to maintain a **full log book** for **one complete year** to establish the business use of a vehicle in a **base year**. **After** one complete year of keeping the log book to establish a base year, a **three-month sample log book** can be used to establish **business use** for the entire year, providing the usage is within the **same range** (within 10%) of the results of the base year.

OWNER - MANAGER REMUNERATION

95(4)

SALARY PAID TO FAMILY MEMBERS - EMPLOYMENT INSURANCE (EI)

In an April 20, 2011 **Tax Court of Canada** case, the taxpayer was the **son of the owner** of the corporation and received a **salary** from that corporation. The Court found that the **salary** was **not subject** to **EI** on the basis that the **employment conditions** were **different** than that which would have been provided to an **arm's length** employee.

The Court noted that it is **difficult** for individuals who **work for family members** to have **insurable employment** because the **personal relationship** almost inevitably manifests itself in some way in the **employment relationship**.

Also, in an April 6, 2011 **Tax Court of Canada** case, the Court determined that the **salary paid** by a corporation to the **owner's spouse** was **not** subject to **EI** on the basis that it was **not reasonable** to conclude that the **payer** and the **Appellant** would have entered into a

substantially similar contract of employment if they had been dealing with each other at arm's length.

PERSONAL LIABILITY FOR UNPAID GST/HST

In an April 18, 2011 **Tax Court of Canada** case, the taxpayer was a **director** of a corporation that **did not remit its GST** because the spouse of the shareholder/director was responsible for remitting GST and, due to her **ill health**, she was unable to make the remittance.

The Court noted that the **director** did **not exercise the degree of care, diligence and skill** to prevent the failure to remit the GST that a **reasonably prudent person** would have exercised in comparable circumstances and, therefore, was **personally liable** for the unpaid GST.

However, the Court did recommend that the taxpayer discuss the possibility of the **waiver** of the **penalties and interest** with the CRA under the **Taxpayer Relief Provisions** on the basis that the spouse's illness caused the unremittance of the GST.

ESTATE PLANNING

95(5)

EXCESS RRSP CONTRIBUTIONS

In a February 23, 2011 **Tax Court of Canada** case, the taxpayer was successfully assessed by CRA **tax and penalties** of $1,040 and $177 for the 2004 taxation year and $1,099 and $187 for the 2005 taxation year for **excess RRSP contributions**.

TAXPAYER RELIEF

In a May 30, 2011 **CRA Newswire Release**, the Honourable **Gail Shea**, the new Minister of National Revenue, noted that taxpayers that cannot meet their tax obligations due to a **natural disaster** (such as spring flooding in Quebec, Manitoba, Saskatchewan and Alberta and forest fires in the Slave Lake area) may **apply** for **penalty** and/or **interest** relief by completing **Form RC4288**.

For details, Google "Tax Relief Measures Available to Victims of Natural Disasters in Canada".

OLD AGE SECURITY PENSION (OAS)

The **OAS** is available to Canadians **aged 65** or over who have lived in Canada for at **least ten years** after **age 18**. If a Canadian is living outside Canada, the OAS may still be available if they were residents of Canada for at least **20 years** after age 18.

Seniors **must apply** to receive the OAS. This could be done 6 months before turning age 65 to allow Service Canada time to process the application for payment on the month that the person turns age 65.

OLD AGE SECURITY (OAS) - CLAWBACK

The maximum monthly OAS benefit is $533.70 for the third quarter of 2011. The 2011 **clawback of OAS** benefits starts at 15% of **net income** over **$67,668** and is completely **eliminated** at income of **$110,038**.

In addition, there will be a **repayment** of "**clawed back**" OAS for the **next year** based on 1/12 of the total estimated repayment on the previous year commencing in July of the next year. If the **next year's income** is going to be **significantly less**, a **waiver** for this clawback could be requested.

This repayment is called a **Recovery Tax**. The Recovery Tax is indicated in Box 22 of the T4-OAS and this can be claimed as a tax payment on the return for that year.

WEB TIPS

95(6)

Prezi.com – online presentation software

When looking to improve visua l **presentations** and simply make them sparkle, consider using **Prezi**.

The traditional method for creating a presentation consists of making a series of slides. With Prezi, only **one very large slide** is used. Information and pictures are posted onto it in whichever area the user wants (**similar to putting yellow sticky notes on a whiteboard**). The user than determines the order in which they would like the information to appear. When showing the presentation, the **visual focus simply slides from one posted piece to the next** based on the creators preference.

GST/HST

95(7)

SOME GST/HST POINTS TO CONSIDER
Even though **GST** has been around for **20 years**, there are still a **few areas** that CRA always seems to assess upon **audit** as **mistakes and oversights** often occur in these areas.

1. Supporting Documentation for ITCs

   There are rules that require certain pieces of information be obtained (usually from the invoice) before you can claim an **Input Tax Credit** (an "**ITC**") for the GST/HST that you pay.

2. Meals & Entertainment

   Where **meal and entertainment** expenses are subject to a **50% limitation** for income tax, the **GST/HST** is also **limited to 50%**.

3. Reimbursement of Employee Expenses

   Don't forget that when you **reimburse an employee** for business expenses, you **may** be **eligible to claim an ITC** for the GST/HST that was paid by the employee.

Professional advice may be needed in these GST/HST areas.

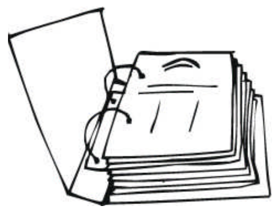
CHARITIES
CRA **Guide GI-067** provides basic GST/HST **guidelines for charities** including special charity GST/HST rules, registration details, and small supplier rules.

CRA **Guide GI-066** provides information on **how a charity calculates** the net GST/HST tax.

FEDERAL BUDGET

95(8)

On **June 6, 2011** a new **Federal Budget** for the 2011 fiscal period was presented.



On March 22, 2011 the original edition of the Budget was presented. However, on March 26, 2011 Parliament was dissolved and, therefore, the Budget was not adopted.

Most items included in the March 22, 2011 Federal Budget were **kept fully intact**.

The **Government's fiscal positions** include deficits in the years 2010/2011 ($40.5 billion), 2011/2012 ($29.6 billion), 2012/2013 ($19.4 billion), 2013/2014 ($9.5 billion), 2014/2015 ($0.3 billion), and a surplus in 2015/2016 ($4.2 billion).

The Federal Government notes that it will:

- provide $80 million in new funding over three years to help small and medium-sized businesses accelerate their adoption of key information and communications technologies,
- provide nearly $870 million over two years to address climate change and air quality, including the extension of the ecoENERGY Retrofit-Homes program,
- introduce a 15-per-cent Children's Arts Tax Credit, provided on up to $500 of eligible expenditures,
- provide a temporary Hiring Credit for Small Business of up to $1,000 against a small firm's increase in its 2011 Employment Insurance (EI) premiums to encourage hiring,
- limit deferral opportunities for corporations with investments in partnerships,
- enhance the Guaranteed Income Supplement (GIS) via a top-up benefit of up to $600 annually for single seniors and $840 for couples,

There were **no** new **corporate or individual tax rates** introduced.

DID YOU KNOW

95(9)

NEW FILING REQUIREMENTS


On September 17, 2010, CRA announced that, effective for **fiscal periods ending after December 31, 2010**, a **Canadian Partnership**, or a Partnership that carries on a business in Canada, must file a **T5013 Partnership Information Return** where **one** of the following conditions are met:

- **At the end** of the fiscal period the **revenues** plus **expenses** are greater than **$2 million** or, the

Partnership has more than **$5 million in assets**.

- At **any time** during the fiscal period the Partnership was either a **tiered Partnership**, had a **Partner** that was a **corporation** or a **Trust**, invested in **flow-through shares** of a principal business corporation that incurred Canadian resource expenses and renounced these expenses to the Partnership **or** had received a **written request** from CRA to file a **T5013** Information Return.

HIGH-NET-WORTH INDIVIDUALS

In February, 2011 CRA introduced a **new audit program** called the "**related party initiative**" (**RPI**) which identifies high-net-worth individuals and their related economic entities for **CRA risk assessment reviews**.

Individuals with net asset value of over **$50 million**, and related groups comprising of 30 or more entities, were the **target** of this project.

CRA is asking for the completion within 30 days of a **20-page questionnaire** asking for information about related economic entities, Corporations, Trusts, Joint Ventures, and Private Foundations. Information requested includes copies of the Minutes of Corporate Board of Directors Meetings, correspondence, legal and accounting firms files used, and tax-planning documents.

U.S. SOCIAL SECURITY BENEFITS

Changes made to the Canada-U.S. Tax Convention beginning in 1996 increased the inclusion rate for **U.S. Social Security benefits** to **85%** from **50%**. The **2010 Federal Budget reinstated** the **50%** inclusion rate for Canadian residents who have been in receipt of U.S. Social Security benefits since **January 1, 1996** and for their spouses and common-law partners who are eligible to receive survivor benefits. These changes apply to benefits received on or after **January 1, 2010**.