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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 Tidbits

Some quick points to consider…

- **All GST/HST returns** (except for those of charities and selected financial institutions) must now be filed **electronically** using methods such as **NETFILE**, internet file transfer through a third-party **accounting software**, CRA's **My Business Account**, electronic data interchange (EDI) through a **financial institution** or TELEFILE through a **toll-free phone number**. Registrants who **paper file** improperly will be charged a **penalty**.
- Starting in 2024, **digital platform operators** (such as Airbnb and Etsy) are required to **provide information to CRA** on the **sellers** who use their platform, including the seller's identification and **details** of their **financial transactions**.
- Over 2.1 million people have registered for the **Canadian Dental Care Plan** (CDCP). Almost 12,000 oral health providers have formally registered to provide services to patients under the plan. Providers can now provide services without formally registering, provided they bill Sun Life directly for eligible services.

Corporate Tax Return Filed Late: Ability to get a Tax Refund

A July 22, 2024 **Federal Court** case found that CRA's **refusal** to accept and provide tax **refunds** for **corporate tax returns** filed **more than three years** after the relevant **year-end** was reasonable. While a **specific provision** allows CRA to accept requests (at their discretion) for **refunds after** the **three-year deadline** for **individuals**, there is **no** parallel **provision for corporations**.

While no tax refund can be provided where corporate tax returns are not filed within three years of the fiscal year-end, CRA has discretion to **re-appropriate** the **refund** to **another account** of the taxpayer (e.g. the taxpayer's GST/HST, payroll or income tax account). However, this re-appropriation is fully at **CRA's discretion**, based on factors such as CRA error or delay, natural or man-made disasters, death, accident, serious illness, or emotional or mental distress.

ACTION: Ensure that corporate tax returns are filed in a timely manner to avoid risking the loss of the tax refund.

Shareholder Purchasing Asset: Input Tax Credit (ITC)

An August 20, 2024 **Tax Court of Canada** case reviewed whether a **corporation** could **claim ITCs** of $8,874 related to the **purchase** of **two vehicles** that were **used by the corporation**. One vehicle was **purchased by** the **shareholder** and the other was purchased by the shareholder and his spouse.

Taxpayer loses

To be eligible for an **ITC**, the **corporation** must meet **all** of the following conditions:

a. the **corporation** must have **acquired** the **vehicles**;

b. the **GST/HST** in respect of the vehicles must be **payable** or must have **been paid by** the **corporation**; and

c. the **vehicles** must have been **acquired** in the course of the **corporation's commercial activities**.

The Court found **no evidence** that the **corporation acquired** either vehicle; the corporation's name was not on the **sales agreements**, **bill of sales**, **vehicle registrations** or **proof of insurance**. In addition, there was **no evidence of any trust**, **agency** or **assignment agreement**. As such, criterion (a) was **not met**.

The Court also found that the **corporation** was **not liable** to pay **consideration** under the purchase agreement for either vehicle; therefore, **GST/HST** was **not** payable by the corporation. As such, criterion (b) was **not met**.

While the corporation argued that the vehicles were used or available for use by the corporation, the vehicles were **not** actually **acquired** in the course of the **corporation's commercial activities**. As such, criterion (c) was **not met**.

While only **failing one** of the above criteria would be **fatal** to the claim, the corporation failed all three. The **ITC** was appropriately **denied**.

ACTION: Care should be afforded to acquire assets in the proper entity such that GST/HST can be recovered as an input tax credit, if appropriate.

Psychotherapy and Counselling Therapy: GST/HST?

As of June 20, 2024, **certain psychotherapy and counselling therapy services** have become **exempt** from **GST/HST**. This means that those providing these exempt services are **no longer required to collect GST/HST** on their services, and these service providers are **no longer** able to **claim input tax credits** (ITCs) on inputs acquired to provide these services.

Psychotherapy and counselling therapy services are now exempt if the provider:

- is **licensed** with a **provincial body** responsible for the regulation of **psychotherapy** services (regulated only in **Ontario**) or **counselling therapy services** (regulated only in **New Brunswick, Nova Scotia and Prince Edward Island**); or
- operates in a province with **no regulatory body** but has the **equivalent qualifications** required to meet the licensing requirements in a regulated province.

In addition, to be exempt from GST/HST, those providing the services must do so within the **profession's scope of practice** in the respective regulated province.

If **all** of a registrant's **services** are GST/HST **exempt**, they may **close** their **GST/HST account** with CRA. If only some of their services are exempt, they must keep their account open and continue to charge GST/HST on non-exempt services and goods.

In addition, on June 20, 2024, there may be a **deemed sale and repurchase** of certain **capital property** (e.g. computers, furniture) used in the provision of these services due to the **change from a taxable to exempt supply**. This generally means that the taxpayer will have to **repay** all or part of the **GST/HST they claimed** (or were entitled to claim) as an ITC when they **bought the property** and when they made any improvements to it. The required repayment of GST/HST is adjusted if the assets have declined in value since the acquisition.

ACTION: If psychotherapy or counselling therapy services are provided, consideration should be provided to determine if the supply is now exempt.

Shareholder Loan Account: Proper Bookkeeping

A July 31, 2024 **Tax Court of Canada** case reviewed whether payments made by a corporation in 2013 and 2014 of $24,249 and $41,680, respectively, were taxable as **shareholder benefits** on the basis that they were for the personal expenses of the shareholder. The Court also reviewed whether payments of $13,693 and $28,131 in 2013 and 2014 were taxable to the shareholder as **indirect payments** on the basis that they were made on behalf of the shareholder's son for personal mortgage payments and day-to-day expenses. The taxpayer **argued** that all these payments constituted **non-taxable shareholder loan repayments**.

Starting in 2001 and continuing over several years, the taxpayer **loaned** a **newly incorporated entity**, of which the taxpayer and his spouse were shareholders, over **$600,000**. The loans enabled the corporation to **acquire** and **operate** a **tire/auto detailing business** managed **by** the taxpayer's **son**. As the corporation could not afford a professional to prepare the corporation's tax returns, the **taxpayer compiled** the **returns**, although he had **no accounting training** other than a personal tax preparation course he took 40 years prior. In 2018, the corporation ceased operations due to financial problems.

Taxpayer loses – shareholder benefit

The Court acknowledged that the **taxpayer** had **made** a **bona fide loan** to the corporation. However, the Court observed that **payments** the taxpayer **received** from the corporation were **not** properly **recorded** via a **debit entry to the shareholder loan account** as a repayment of the shareholder loan. The taxpayer argued that he **did not know how to record payments** for personal expenses in the shareholder loan account. The Court found that this was **not a sufficient reason** for not debiting the shareholder loan account for the repayments of the shareholder loan. The Court noted that the **choice** was to **pay for professional assistance** for the books and records **or learn how to do it properly**, neither of which the taxpayer selected. The **shareholder benefit** income inclusion was **upheld**.

Taxpayer loses – indirect payment

The Court noted that **all** of the following **conditions were met** in respect of payments to or for the benefit of the taxpayer's son:

- the payments were **made** to a person (the son) **other than** the **reassessed taxpayer** (the shareholder);
- the **allocations** were at the direction or with the **concurrence** of the **reassessed taxpayer** (the shareholder);
- the **payments** were made for the **benefit** of the reassessed taxpayer (the shareholder) or for the benefit of **another person** (the son) **whom** the reassessed taxpayer **wished to benefit**; and
- the **payments would have been** included in the **reassessed taxpayer's income** (the shareholder's income) if they had been received by them.

The taxpayer was, therefore, required to pay tax on the indirect payments benefiting his son.

> **ACTION:** Ensure that all loans to a corporation and associated repayments are properly recorded in the books and records of the corporation.

Withholding on Rent Paid to Non-Residents: Draft Legislation

Under current rules, when rent on Canadian property is paid to a non-resident, 25% of the gross rent must be withheld and remitted to CRA. This could be the case where, for example, a college student pays rent to live in the basement of a house owned by a non-resident. If the non-resident provides an NR6 form, the 25% withholdings are based on the net rent.

Effective August 12, 2024, the Department of Finance released a proposal that would provide an **exclusion** to this **withholding requirement**.

Specifically, an individual would **not** have to **withhold tax** in respect of an amount **paid** or credited to a **non-resident** as rent for the **use of a residential property** in which an **individual resides** (whether or not that individual is the one paying the rent). In this case, the **non-resident person** would be **required to remit** and report the withholding, assuming that an agent of the non-resident was not already required to do so.

All rents paid on Canadian real estate to a non-resident that do not fit within the specific terms of this exception would continue to require withholdings and reporting by the tenant.

> **ACTION:** If this proposal is legislated, individuals would no longer be required to withhold amounts in the specific situations covered by this proposal.

Employment Expenses: Salary to Spouse

A June 17, 2024 **Tax Court of Canada** case reviewed a **commission salesperson's** deduction for **remuneration paid** to their **spouse** (L) for general **administrative services** as a **self-employed** contractor.

Taxpayer loses

The **annual deductions** of $20,000 for services, including **arranging appointments** with **prospective clients** (who completed preprinted forms at a kiosk to express interest in a salesperson's products/services), were **not supported** by a **contract** or by any **documentation** such as a log or **list of customers** contacted. The taxpayer testified that **payment** was made in the form of **joint household expenses** that did **not directly match** the amounts deducted. The taxpayer testified that he left the **determination** of the **amount deducted** to his **accountant**.

The **Court agreed** that the onus was on the **taxpayer** to maintain **books and records**, such as a **contract for services** or **actual payments** for those services, to document expenses claimed. His **verbal testimony** alone was **not adequate** to support the deductions claimed – they were **properly denied**.

Employment expenses – regular vs. commission employee

The scope of deductible employment expenses for employees earning commission income is much broader than for non-commission employees. Expenses incurred to earn commission income are deductible provided that they are not specifically prohibited (purchase of capital assets, personal expenses or payments that reduced a taxable employment benefit) and provided that the other standard conditions for deduction are met. In contrast, only expenses specifically listed as deductible can be deducted against non-commission employment income. For example, a non-commission employee can deduct salaries paid to an assistant only if the employment contract specifically requires them to pay for an assistant; however, no provision would permit a deduction for fees paid to a self-employed assistant.

> **ACTION:** If paying an assistant such that you can earn commission income, ensure to properly pay and retain documentation to support the claim.

New Canada Disability Benefit: Proposed Regulations

Details on the new **Canada disability benefit** were included in regulations that were released on June 29, 2024. This benefit is intended to provide support to **low-income working-age individuals** with a **disability**.

To be **eligible** for the **benefit**, the taxpayer would be required to:

- be a **resident of Canada** (for tax purposes);
- have a valid **disability tax credit certificate**;
- be between the **ages of 18 and 64**;
- have **filed an income tax return** for the previous tax year; and
- be a **Canadian citizen**, permanent resident, protected person, temporary resident (that lived in Canada for the past 18 months) or registered (or entitled to be registered) under the Indian Act.

The **maximum benefit** for the July 2025 to June 2026 period would be **$2,400** ($200 per month), but would be **reduced by** the following:

- **20%** of income above **$23,000** if the beneficiary is **single**;
- **20%** of income above **$32,500** if the beneficiary is **married** or has a **common-law partner**; and
- **10%** of income above **$32,500** if the beneficiary is **married** or has a **common-law partner** and **both are eligible.**

In addition, the **first $10,000** of **work income** ($14,000 for a couple) would be **exempt** from this calculation. Work income would have the **same definition** as that used for the **Canada workers benefit**, which includes income from sources such as employment and self-employment. The maximum benefit amounts would be increased in future years for **inflation** (based on the consumer price index).

If an **application is denied**, the taxpayer would have **180 days** to apply for **reconsideration**. If still unsuccessful, the decision could be **appealed** to the **Social Security Tribunal**.

> **ACTION:** If the regulations are finalized as proposed, ensure that eligible individuals apply for this new benefit.

Trust Distributions: Violating Trust Terms

A March 30, 2023 **Tax Court of Canada** case reiterated the importance of the trustee of a trust properly understanding the terms of the trust. In this case, the **trust** had **paid** $100,000 to **two beneficiaries**, both under age 18, from capital gains eligible for the capital gains exemption. However, the **terms** of the **trust prohibited payments** to beneficiaries **under age 18**.

Taxpayer loses

The Court ruled that **amounts paid** in **violation** of the **trust terms** were not **payable** for income tax purposes and were therefore **neither income** to the **beneficiaries** nor **deductible** from the **trust's income**.

> **ACTION:** If acting as a trustee of a trust, ensure to fully understand the terms of the trust to avoid a surprising tax consequence.

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.

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