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Dear Clients/Friends:

This is a quarterly newsletter which we send to clients, referral sources and friends. The information is meant to be educational and application of the concepts should be on an individual basis. Please do not hesitate to contact us should you require further clarification of any item.

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PERSONAL TAX

90(1)

APPRENTICESHIP GRANTS

Apprenticeship Incentive Grant (AIG)

The AIG is a **taxable grant** of **\$1,000 per year** up to a maximum of **\$2,000 per person**, available to registered **apprentices** once they have successfully completed their first or second year/level (or equivalent) of an Apprenticeship Program in one of the **Red Seal Trades**. There is a **deadline** to apply.



Apprenticeship Completion Grant (ACG)

The ACG is a **\$2,000 taxable grant** to encourage **apprentices** registered in designated **Red Seal Trades** to **complete** their Apprenticeship Program and receive their certification. Eligibility is

retroactive to January 1, 2009.

The **ACG** is offered to apprentices who **complete** their training, become certified journeymen/journeywomen in a designated **Red Seal Trade** and who obtain either the **Red Seal Endorsement** or a provincial or territorial **Certificate of Qualification**.

There is a **deadline** to apply.

Trades Included in the Red Seal Program

To date, there are **fifty trades** included in the **Red Seal Program** on a national basis. For a list of Red Seal Trades, Google "**Red Seal Trade**".

Editor's Comment

Your **province** may also offer Apprenticeship Grants.

MEDICAL EXPENSE - TUITION COSTS

In a January 20, 2010 **External Technical Interpretation**, CRA notes that where, due to a **physical**

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or mental handicap, a **student** who is **certified** to require specialized care, or care and training, at a school or institution, may claim a **medical expense tax credit** for the cost of such care, or such care and training.

MEDICAL EXPENSES

In a February 2, 2010 **Tax Court** of Canada case, the taxpayer had progressive **Multiple Sclerosis** and

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successfully deducted as a medical expense the amount paid to the **Huron Lodge** (a home for the aged) in Windsor, Ontario.

NURSING HOME

The Income Tax Act provides a medical expense for **full-time care** in a **nursing home** if the patient has been certified by a **medical practitioner** to lack normal mental or physical capacity, and in the foreseeable future will continue to be dependent on others.

EMPLOYMENT INCOME

90(2)

OVERTIME MEAL ALLOWANCES



Starting **January 1, 2009** where an employer provides **overtime meals** or an **allowance** for overtime meals to its employees, the CRA will **not**

assess a **taxable benefit** where:

- the amount of the overtime meal allowance, or the cost of the meal, is **reasonable**;
- the employee works **two or more hours** of overtime right before or right after his/her scheduled hours of work; and
- the overtime is **infrequent** and occasional in nature. (CRA generally considers **less than three times** a week, or more in special circumstances, as being **infrequent and occasional**.)

CRA will generally consider an

amount **not exceeding \$17** as being **reasonable**.

IN-SERVICE PROGRAM WHICH PROVIDES A LAPTOP COMPUTER

In a **January 6, 2010 External Technical Interpretation**, CRA notes that it has considered **several programs** where **employers** have **provided** their employees with **personal computers, printers, software** and/or **Internet access** for developing their employees' **computer and Internet skills**.

BUSINESS/PROPERTY INCOME

90(3)

TRUCKS OR TRACTORS FOR HAULING FREIGHT

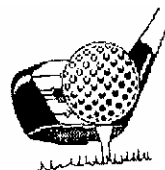
The Income Tax Act provides a **40% Capital Cost Allowance rate** for a **truck or tractor** designed for **hauling freight** and that has a "gross vehicle weight rating" in excess of **11,788 kilograms**.

In a **CRA Technical Interpretation**, CRA notes that this may **apply** to a taxpayer that **hauls its own freight**.

Also, in an **October 9, 2009 Technical Interpretation**, CRA notes that **garbage trucks** used for the collection and hauling of residential and industrial waste would normally also qualify.

EVENTS AT A GOLF CLUB

In a **January 22, 2009 Technical Interpretation**, CRA notes that where a business



holds a **day of golf** for **all employees** and the company pays for the **green fees, rental of golf equipment, and food provided** to the employees, the Income Tax Act does **not** allow a **deduction** in respect of any expenditure for the use of a **golf facility**.

However, with respect to the **meals**, CRA notes that a golf club facility does **not include** the **dining room, reception hall, conference room, lounges or a bar of a golf club** so the **deduction** of expenses incurred to buy **food and beverages** is not restricted by the golf facility rules.

Also, assuming that the food was offered to **all employees**, and it is **one of six special events** held in the year by the company, the Income Tax Act allows a **100% deduction** for the food and beverages, as opposed to the 50% which is normally allowed.

OWNER-MANAGER REMUNERATION

90(4)

THE TWO-YEAR LIMIT

In a **March 5, 2010 Tax Court** of Canada case, CRA assessed Mr. M., as the "**de facto director**" of the corporation, for the **unpaid GST (plus interest and penalties)** owed by a company.

The taxpayer had **resigned** as a **director** on **January 15, 2004** and the **assessment** was **not issued** until **more than two years later, June 29, 2006**.

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Taxpayer Wins!



The Court noted that, even though the Excise Tax Act provides a **two-year statute of limitations**, a person who is **not a director** may be considered a “**de facto director**” if they hold himself/herself out as a director such that a third party relies upon that person’s implicit authority as a director. In this case, the taxpayer was **not** a “**de facto director**” of the company.

2010 FEDERAL BUDGET

90(5)

On **March 4, 2010** the Honourable **Jim Flaherty**, Minister of Finance, presented his **fifth Budget** to the House of Commons.

Some proposals include:

A. PERSONAL INCOME TAX

1. Medical Expense Tax Credit – Purely Cosmetic Procedures

Budget 2010 proposes that expenses incurred for **purely cosmetic procedures**



(including related services and other expenses such as travel) be **ineligible** to be claimed under the **Medical Expense Tax Credit**. This generally includes surgical and non-surgical procedures purely aimed at enhancing one’s appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

These expenses will also become subject to **GST/HST**.

This will apply to expenses incurred after **March 4, 2010**.

2. Charities: Disbursement Quota Reform

Budget 2010 proposes to reform the **disbursement** quota for fiscal years that end on or after **March 4, 2010**.

3. Employee Stock Options

Budget 2010 proposes to **prevent both the stock option deduction** to the employee and a **deduction** by the **employer** from being claimed for the same employment benefit.

Budget 2010 also proposes to **repeal** the stock option **tax deferral election** to employees of public corporations.

Budget 2010 also proposes to introduce a **special elective tax treatment** for taxpayers who elected under the current rules to **defer taxation of certain public share stock option benefits** until the disposition.

B. OTHER TAX

Online Notices

Budget 2010 proposes that the *Income Tax Act*, *Excise Tax Act*, *Excise Act, 2001*, *Air Travellers Security Charge Act*, *Canada Pension Plan* and *Employment Insurance Act* be amended to allow for the **electronic issuance** of those **notices** that can currently be sent by ordinary mail if **authorized by a taxpayer**.

ESTATE PLANNING

90(6)

VOLUNTEERS

In a March 11, 2007 **External Technical Interpretation**, CRA notes that where an individual is a **volunteer without remuneration**, or at most minimal remuneration, **reimbursements** of automobile expenses, airline tickets, and payment of allowances for meal expenses to attend meetings of the Board of Directors (including allowances to cover meals for their spouses) are **not** considered **income** for tax purposes.

TURNING AGE 71 IN 2010

Taxpayers turning **age 71** in 2010 could consider making one year advance **contributions** to their **RRSP**. For example, by making the 2011 contribution in **December, 2010** (just before the **RRSP** is wound-up), this **over-contribution** may be deducted in January, 2011 if there is sufficient **contribution room** for 2011. This would be subject to a **1% penalty** for the month of December on the **excess contributions** over \$2,000. However this penalty is minor compared to the large tax deduction in 2011.

Professional advice is recommended.

TAX-FREE SAVINGS ACCOUNT

On October 16, 2009, Finance **News Release 2009-099** provided technical amendments to the **TFSA** rules including a **100% tax** on the **income** under the “**advantage**” rules, in

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addition to the existing **1% per month penalty tax** on **over-contributions**.

STRUCTURED SETTLEMENT

In a 2009 **Advance Tax Ruling**, CRA Ruled that the payments under an annuity contract to the Plaintiff will **not be taxable** in the hands of the recipient as it meets the terms of a **structured settlement**.

In this case, an individual (Plaintiff) suffered **serious permanent injuries** at the time of **birth**. The **Plaintiff** commenced an **action** against the **Defendant**. Pursuant to an **out-of-Court settlement**, the **casualty insurer** of the Defendant assigned its rights and obligations to an **assignment company** who will purchase a **single premium annuity contract** with a life insurance company to provide **periodic payments** to be **received** under a **structured settlement arrangement**.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

90(7)

In a December 23, 2009 **Court of Appeal for Ontario** case, the **Court** found the **Agreement** between Elizabeth McKee and Reid's Heritage Homes (RHH) was one of **employment**, not independent contractor.

The Court then noted that it is an **implied term** in an **employment situation** that the employee is entitled to reasonable **notice of termination**.

In this case **Mrs. McKee** worked **exclusively** for RHH. She was also **under the control** of RHH as to where she was to sell, the promotion

methods, what she was to sell, and how much it was to sell for. With respect to the **"tools"**, Mrs. McKee performed her sales functions in **model homes** provided by RHH and RHH supplied her **stationery and forms**. Also, Mrs. McKee was **financially dependent** on RHH and had **no expectation** that she might earn a profit as distinct from the fixed commissions. Also, the sales force of which Mrs. McKee was a member was a **crucial element** of RHH's business organization.

Editor's Comment

It is **important** to have the **terms** of the engagement in **writing** and that the **relationship** meets the required tests if **independent contractor status** is to be obtained.

Also, another **downside** for the **payer** is that when a **recipient** is considered to be an **employee**, the payer may be subject to **penalties** for failing to withhold and remit **source deductions** for income tax, CPP, EI and Workers Compensation. The payer may also have liability if the worker was to have received **other benefits**.

GST/HST

90(8)

PLACE OF SUPPLY RULES

On **February 25, 2010**, Finance Release **2010-014** introduced new **Place of Supply Rules** related to **where** the recipient of a service or an intangible property is located with respect to the GST/HST rules.



For example, **Ontario** (13%) and **British Columbia** (12%) are proposing to introduce HST on **July 1, 2010**.

CREDIT CARD EXPENSES AND THE REGISTRANT'S USE OF FACTORS FOR CLAIMING INPUT TAX CREDITS

In an April 28, 2010 **CRA Release P-184**, CRA discussed the use of the **Factor Method**, instead of the **Exact Calculation Method**, to compute the eligible **Input Tax Credits** (ITCs) in relation to **credit card reimbursements** for expenses incurred by employees.

ELECTRONIC FILING

On January 4, 2010, CRA proposed **mandatory electronic filing** requirements for certain **GST/HST Registrants** beginning **July 1, 2010**.



Under the measures, the following groups will be **required** to file their **GST/HST Returns electronically**:

- **GST/HST Registrants** with **greater than \$1.5 million** in annual taxable supplies (except for charities);
- Registrants required to recapture **Input Tax Credits** for the provincial portion of the HST on certain inputs in **Ontario or British Columbia**; and
- builders affected by the transitional housing measures announced by **Ontario or British Columbia**.

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