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*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.*

## PERSONAL TAX

93(1)

### MEDICAL EXPENSES

In an October 27, 2010 **Technical Interpretation**, CRA notes that a **dock landing gate**, associated with the use of a **wheelchair**, is a **medical expense** as a **renovation or alteration** to a dwelling of the person who lacks normal physical development or has a severe and prolonged mobility impairment. However, to **qualify**, the expenditure should **not increase the value** of the dwelling and is **not** of a type that would **normally be incurred** by persons who have normal physical development.



Also, an **air purifier** purchased for a house because of the person's **asthma and a compromised immune system** may qualify as a **medical expense**.

### MEDICAL AND DISABILITY RELATED INFORMATION

CRA Guide RC4064 provides

**medical and disability** related tax information for people with **medical expenses** or **impairments** in **physical or mental functions** and anyone **supporting** these people.

Also, if a person has a **permanent mobility impairment**, and cannot safely use public transportation, he/she may apply for a **refund** of part of the **Federal Excise Tax** on gasoline purchased. (Information Sheet XE8, page 24)

### DISABILITY TAX CREDIT (DTC)

An individual who is **markedly restricted** in the basic activities of daily living, or requires **14 or more hours** per week to administer **Life Sustaining Therapy**, may be eligible for the **DTC**.

For example, the **Canadian Diabetes Association** website (search: disability tax credit) notes that if a taxpayer or a child uses an **intensive insulin management system (IMS)** or an **insulin pump** with respect to Diabetes, they may qualify for the **DTC**.

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## EMPLOYMENT INCOME

93(2)

### INSURABLE EMPLOYMENT

The Employment Insurance Act (EIA) notes that insurable employment **does not include** the employment of a person that **controls more than 40%** of the **voting shares** of the corporation.

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It also **excludes** employment if the employer and employee are **not dealing at arm's length** and they **do not have a substantially similar contract** of employment as other arm's length employees. (Professional advice may be needed in this area.)

Also, the **Employment Insurance Regulations** deem certain persons to be involved in **insurable employment** including **stevedores, lumbering or logging, placement or employment agency, barbering or hairdressing establishments, and passenger vehicle operators.**

Each of the categories has their own **specific details.**

#### TAXABLE BENEFITS

CRA **Guide T4130** provides information on **taxable and non-taxable employment benefits and allowances** including board and lodging, cellular phone service, child care expense, counseling services, disability related employment, discounts on merchandise, education benefits, gifts and awards, group term life insurance policies, housing, interest-free and low interest loans, internet use, loyalty and other "points programs", meals, medical expenses, moving expenses, municipal officers expense allowance, parking, power saws, premiums under provincial hospitalization, private health service plans, professional membership dues, recreational facilities and club dues, RRSPs, security options, social events, spouse's or common-law partner's travelling expenses, TFSAs, tool reimbursements, transit passes, transportation to and from home, travel allowances, uniforms and special clothing, and wage-loss replacement plans or income

maintenance plans.

The Guide also has a **benefits chart**, which lists the benefits and the applicability of **CPP, EI, and GST/HST.**

#### SCHOLARSHIPS FOR THE CHILDREN OF EMPLOYEES

In a September 29, 2010 **External Technical Interpretation**, CRA notes that they **now accept** that where an **arm's length employer** provides a **post-secondary scholarship**, bursary or free tuition to **family members** of an **employee** under a bona fide **Program**, the amount may be **non-taxable.**



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#### BUSINESS/PROPERTY INCOME

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93(3)

#### INTEREST EXPENSE

In an August 10, 2010 **Internal Technical Interpretation**, CRA notes that normally they consider **interest costs** in respect of funds borrowed to purchase **common shares** to be **deductible** on the basis that there is a **reasonable expectation** that the common shareholder will receive **dividends.** These comments are also generally applicable to investments in **Mutual Fund Trusts** and **Mutual Fund Corporations.**



#### EMPLOYEE VS. INDEPENDENT CONTRACTOR

##### Case 1 - Independent Contractor

In an October 22, 2010 **Tax Court** of Canada case, given the **clear shared**

**common intention** to be a **subcontractor** between the payer and the workers, the Court found that the workers were **independent contractors**, not employees.

##### Case 2 - Independent Contractor

In an August 31, 2010 **Tax Court** of Canada case, the **issue** was whether the **salesman** was an **independent contractor** or engaged in employment income. The **Court** concluded that the salesperson was an **independent contractor** and noted that:

1. The worker had signed **Written Agreements** with the Appellant when he began his working relationship on the basis that he was an **independent contractor.**
2. The facts that apply in respect to establishing **control**, ownership of **tools**, possibility of **profit**, risk of loss, and **integration** show that the worker was an **independent contractor.**
3. **No controls** were exercised on his services and the worker had the opportunity to make a **profit** and took on a risk of a loss. He provided his own **work tools** and his own equipment. He had **no job security** and was free to accept **other employment** or contracts while engaged.
4. The test of **intent** also indicates that the worker was an **independent contractor.**

##### Case 3 - Independent Contractor

In a November 16, 2010 **Tax Court** of Canada case, the **Court** found that the **workers** were **independent**

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**contractors**, not employees, and noted that:

1. A **mutual intention** to create an **independent contractor relationship** indicates that the individuals were **independent contractors**, not employees.
2. The workers were able to **set their own hours of work**, although within certain limits.
3. The workers were able to **work for other clients** without consent of the payer.
4. The workers used their **own vehicles** to pick up supplies and charged an hourly rate for the use of their vehicles.
5. The workers carried on their business under a **business name**, for example, "Cleaning with Care", and had their **own liability insurance coverage**.

#### Case 4 - Employee

In a November 22, 2010 **Tax Court** of Canada case, the **Court** found that the workers were **employees** and noted that:

1. The parties **did not share a common understanding** that the worker was to be **self-employed** and not an employee. Where the intention of the parties cannot be ascertained, it is necessary to look at all the facts to see the legal relationship.
2. The **payer** provided all the **tools and equipment**, except for a keyboard.
3. The worker had **no responsibility for investment** in management.

4. The **worker** had **no expenses** and **no liability** exposing her to a risk of loss and there was no opportunity for her to increase her income.
5. The **worker** received **instructions and directions** from the payer on a daily basis.

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#### OWNER - MANAGER REMUNERATION

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93(4)

#### DIRECTOR LIABILITY

In an October 26, 2010 **Tax Court** of Canada case, the taxpayer was a **director** of a corporation that failed to remit **payroll source deductions** and the **director** was assessed **personally**. The taxpayer argued that he had **resigned more than two years** before CRA assessed him and, therefore, was **statute-barred**. Also, he argued that he exercised **due care and diligence** by hiring a **bookkeeper** to deal with the payroll.

#### Taxpayer Loses

The Court noted that a resignation does **not become effective** until the provisions of the **Business Corporation Act** are met.

With respect to **due diligence**, the fact that he hired a bookkeeper to handle the payroll was **not enough**. The taxpayer had not shown that he took action to prevent the bookkeeper's failure to remit the source deductions.

#### CPP AND EMPLOYEE PROFIT SHARING PLANS (EPSP)

The maximum **pensionable earnings** for 2011 are **\$48,300** with a basic exemption of **\$3,500** and an

employer/employee rate of **4.95%** leaving a maximum employer/employee contribution of **\$2,218**, or a maximum self-employed contribution of **\$4,436**. One approach to receive compensation that may **not be pensionable** is to use a bona fide **EPSP**.

However, some taxpayers choose to have enough pensionable earnings to **retain eligibility for CPP disability payments**.

Recent court cases indicate that an **EPSP** can be used to permit the **owner-manager** to opt out of the **CPP system**, but may not remove other employees from the CPP and EI systems in respect of their **regular remuneration**.

**Professional assistance** is needed in this area.

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#### RELATIONSHIP BREAKDOWN

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93(5)

#### LIVING IN THE SAME RESIDENCE

In a July 27, 2010 **External Technical Interpretation**, CRA notes that



it is **possible** that both spouses can **"live apart"** because of a breakdown of their marriage for deductible/taxable **alimony** purposes **even if they still live under the same roof** if, for example, the following circumstances are present:

- they occupy **separate bedrooms**;
- there is a **lack of sexual relations**;
- there is little or **no communication**;
- there are **no domestic services** to each other;

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- the spouses receive their **mail separately**; and
- the spouses have **no common social activities**.

## LUMP-SUM PAYMENTS FOR SPOUSAL SUPPORT ARREARS

In a September 20, 2010 **Technical Interpretation**, CRA notes that **lump-sums** paid for **arrears** of spousal support, even if made under a Court Order, may **not be deductible/taxable**.

### Editor's Comment

The **jurisprudence** in this area is mixed. Therefore, **legal/tax advice** may be needed with respect to the deductibility/taxability of **arrears payments**.

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## ESTATE PLANNING

93(6)

### DONATION SCHEMES

In an October 28, 2010 **Federal Court of Appeal** case, the Federal Court **confirmed the Tax Court decision** which found that Mr. M should **not receive any donation tax credit** even though he did have a cash donation of \$30,000 in return for the inflated \$100,000 donation receipt.



### CANADA PENSION PLAN (CPP)

New legislation includes **many changes** to the **Canada Pension Plan**, most of which take place in **2012**.

For example, in 2012 individuals **under the age of 65** who work, as

well as their employers, will be required to make **CPP contributions**, even if they are **receiving a CPP retirement benefit** early. This will be **voluntary** for individuals age 65 or over, but **employers** of those opting to participate in the CPP would be **required** to also contribute.

### REFINANCING PRESCRIBED RATE LOANS

Family **income splitting** may be **achieved** by making **loans between** family members at the **prescribed interest rate**, which is currently **1%** until March 31, 2011. This 1% rate has been in effect since the second quarter of 2009. Previous to this, the prescribed interest rate was higher.

Therefore, consideration could be given to entering into **new loans** and, **properly refinancing** previous loans from periods before the second quarter of 2009.

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## GST/HST

93(7)

### PLACE OF SUPPLY RULES

In a June 3, 2010 52-page Release, CRA provides information on the **Place of Supply Rules** for purposes of GST/HST for determining where a supply is made. In **general**, the place of supply is the **address of the recipient** of the **service** or, **where the good is delivered**. This is **important** because of the different **GST/HST rates** – British Columbia, **12%**, Ontario, New Brunswick and Newfoundland **13%**, Nova Scotia **15%** and other jurisdictions **5%**.

It is important to note that provinces that still have a **Provincial Sales Tax**, such

as Saskatchewan, Manitoba, Prince Edward Island and Quebec may have different Place of Supply Rules.

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## DID YOU KNOW

93(8)

### PENSIONS

For an individual who has reached **age 65** before the end of the year, the types of "**pension income**" that are **eligible** for a tax credit on up to **\$2,000** and for **splitting** with a spouse or common-law partner include:

- a **life annuity** out of a superannuation or pension plan;
- an annuity payment out of a **Registered Retirement Savings Plan**;
- a payment out of a **Registered Retirement Income Fund**;
- an annuity payment from a **Deferred Profit Sharing Plan**; and
- the **interest portion** of certain **other annuities**.

For **example**, if a person does not have any otherwise qualifying "**pension income**", is age 65 or over, and does not want to draw down on registered assets; he/she could consider purchasing a **non-registered annuity**. The deposit should be enough to produce at least \$2,000 of interest income which qualifies for the **pension income** amount.

Also, individuals that are **65 years old** with an **RRSP** may wish to consider transferring a portion of the RRSP into an **annuity** or into a **Registered Retirement Income Fund** on which **pension income** may be received. **Professional advice**

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may be needed in this area.

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