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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.*

## THANKS FOR YOUR REFERRALS

We have survived another tax season and it was great to see all of our clients again. Thanks again for your continued confidence in us. We value your relationship and are committed to helping you in a skillful and caring manner. If you are aware of anyone requiring our services please pass along our name and forward this newsletter on to them. We pledge that we will treat them with the utmost care, courtesy and respect.

## PERSONAL TAX

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### CRA LETTER INITIATIVE

CRA will be conducting a **Letter Campaign** in 2011.

Two types of letters will be sent to Canadians across the country. Some



will receive a letter providing information about the **eligibility criteria** of certain deductions they have claimed on their recent income tax returns. Others will receive a letter with the same information however; it will also inform them that their income tax returns **may be selected for audit**.

This is the **same** as the **Letter Campaign** that was first commenced in **early 2010**. In 2010 the Letter Campaign involved sending **37,000 letters** to Canadians.

As part of this **second year** of its Campaign, CRA will send **29,000 letters** similar to those sent in 2010. CRA notes that the letter does not mean that the tax returns were incorrect. CRA requests that if the

return was not correct that a T1-ADJ be submitted to CRA. CRA notes that the letter recipients were **chosen at random**. For a series of **questions and answers** on this, see [cra.gc.ca/whtsnw/tms/ltrcmpgn-eng.html](http://cra.gc.ca/whtsnw/tms/ltrcmpgn-eng.html).

### WORKING INCOME TAX BENEFIT (WITB)

The maximum **WITB for 2010** is **\$931** for **single** individuals with no eligible dependents, or **\$1,690** for individuals with an eligible **spouse** or at least one eligible **dependent**.

The **WITB** is a **refundable tax credit** available to eligible **working low-income individuals**. You could claim the WITB in 2010 if your working income is **over \$3,000** and you meet the **eligible criteria**.

You are **eligible** for the WITB in 2010 if:

- you are **19 years** of age or older on December 31, 2010; and
- you are a **resident** of Canada.

However, if you are **under 19** years of age, you may still claim the WITB if you have a **spouse** or common-law

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partner or an **eligible dependent** on December 31, 2010.

You are **not eligible** for the WITB if you are enrolled as a **full-time student** at a designated educational institution for more than 13 weeks in 2010 **and** you do not have an eligible dependent. To claim the WITB, you complete Schedule 6 of the T1 Personal Tax Return.

**Working income** is income from **employment and business**.

Also, eligible individuals have the

# Tax Tips & Traps

option to apply for **WITB advance payments** to a maximum of 50% of the expected claim on your 2011 tax return.

The 2010 adjusted **family net income levels** if you had **neither** an eligible **spouse** nor an eligible **dependent** is less than **\$16,770**. If you had an eligible **spouse** or an eligible **dependent**, it is less than **\$25,854**.

If you qualify for the **disability supplement** and you do **not** have a **spouse** or **dependent**, the net income level is **\$19,867**. If you had a **spouse** or an eligible **dependent**, it is **\$28,954**. However, if **both spouses** are **disabled** the net income level is **\$32,054**.

For more details see CRA **Guide RC4227**.

These amounts **vary** for residents of Alberta, British Columbia, Nunavut and Quebec.

#### **MEDICAL EXPENSE - IN-VITRO FERTILIZATION**

In a March 9, 2011 **Technical Interpretation**, CRA notes that the cost of **in-vitro fertilization** **qualifies** as a **medical expense**, as do the **related travel costs**, as long as certain criteria are met.

#### **MEDICAL EXPENSE - SLEEP EVALUATION STUDY**

In a March 9, 2011 **Technical Interpretation**, CRA notes that a **sleep evaluation study** meets the **medical expense** conditions which includes diagnostic procedures for maintaining health.

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## **EMPLOYMENT INCOME**

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### **SOCIAL EVENTS**

In an October 8, 2010 **Technical Interpretation**, CRA notes that where an **employer** provides free of charge to **all employees**, a **party** or other **social event**, there is **no taxable benefit** if the **cost per employee** does not exceed **\$100**. This limit is **per occurrence**. More than one event per year may be offered by the employer if it is **reasonable** in the circumstances.



Where the event is offered to all **employees** and their **spouses**, the average cost of **\$100** is calculated based on the **total number of guests** and not only by the number of employees.

The \$100 is an average based on the total amount paid by the employer for the reception or social event, including room rental, food and entertainment expenses. Thus, it is necessary to include the **GST/HST paid** by the employer in calculating the average cost of the evening.

**Additional costs** such as transportation home, taxi fare, and overnight accommodation are **not included** in the \$100 per person. If the cost is **greater** than **\$100** per person, the **entire** amount, including the **additional costs**, is a **taxable benefit**.

### **SETTLEMENT - GENERAL DAMAGES**

In a March 15, 2011 **Technical Interpretation**, CRA notes that where general damages are received

in respect of **personal injuries** sustained before or after the loss of employment (for example, in situations of harassment during employment or defamation after dismissal), or where a loss of employment involves a **human rights violation**, the general damages will be viewed as unrelated to the loss of employment and, therefore, **non-taxable**.

However, it must be clearly demonstrated that the damages received relate to events or actions **separate from** the loss of **employment**. In the case of damages received for a **human rights violation**, only a **reasonable amount**, determined by reference to the maximum amount that would be awarded under the particular human rights legislation and the evidence presented in the case, would qualify as **non-taxable**.

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## **BUSINESS/PROPERTY INCOME**

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### **SALARY TO A SPOUSE**

In a March 14, 2011 **Tax Court of Canada** case, the **issue** was whether CRA was correct in denying the Appellant's **deduction for a salary** to his **spouse** against his Proprietorship income in 2005 of \$9,200.



### **Taxpayer Wins!**

The Court noted that:

1. In 2005 the Appellant **needed additional help** in his Proprietorship and he retained his spouse who has a Bachelor of Science Degree from the University of Windsor in Honours Electrical Engineering/Computer Option.

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# **Tax Tips & Traps**

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- The Appellant stated that his **spouse** supervised the installation and implementation and debugging of a particular hardware at the customer's site. The project lasted for about four months.
- The Court concluded that it was more likely than not that the taxpayer did retain services of his spouse in 2005 and that **she earned** the \$9,200 paid for those services.

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## OWNER - MANAGER REMUNERATION

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### DIRECTOR LIABILITY FOR GST/HST

In a February 8, 2011 **Tax Court of Canada** case, the taxpayer was a **director** of a corporation which had **not remitted its GST**. Therefore, he was **personally** liable, and paid **\$57,202** and incurred legal fees of **\$3,196** in defending himself.

#### Taxpayer Loses - Again!

The Court found that the **payment** for the GST on behalf of the company was **not a deductible expense** and, the **legal expenses** were also **not deductible**. Legal fees paid in relation to an Objection or Appeal under the **Excise Tax Act** are **not deductible** whereas, **legal fees** to object under the **Income Tax Act** are **deductible**.

However, legal fees to contest a **GST Assessment** may be deductible under ordinary business principles if the taxpayer is **carrying on a business**. In this case, he was not. Therefore

the legal fees with respect to the GST were not deductible in computing business income.

The payment for the **director's liability** is **not deductible** because it is **not** incurred to earn **income**.

**Legal fees** with respect to **GST** may also be deductible as an amount paid in making a **representation** relating to a **business** carried on by the taxpayer. However, in this case, the taxpayer was **not** carrying on a **business**.

### EMPLOYMENT INSURANCE (EI)

In a January 20, 2011 **Tax Court of Canada** case, **CRA** took the position that the salary paid to Dion (the **son of the shareholders** of the corporation) was **subject to EI** on the basis that his terms and conditions of employment were **roughly similar** to those that would have occurred if there was an **arm's-length relationship**.

#### Taxpayer Wins!

The Court noted that the **exception for EI** under the Employment Insurance Act was **met** on the basis that:



- Dion** had much **more freedom** with regard to working hours than an arm's-length shop supervisor would have had.
- He was **paid for periods** during which **he took off** and he provided **substantial assistance** for questions related to the **operations** of the company.
- Even if nothing is cast in concrete, Dion and his parents had agreed that in a few years

**he would purchase** the company from his parents when they retired.

- It would **not be reasonable** to conclude that the terms of employment were **roughly similar** to those that would have occurred if there was an arm's-length situation.
- It was clear that his **relationship** with the company was **very different** from what **CRA** had assumed.

#### Editor's Comment

It is **important** on the **initial enquiry** by **CRA** that the **proper information** is provided to **CRA** so that they may make a **proper decision** without the taxpayer having to file an Appeal to the Tax Court before receiving an equitable result.

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## ESTATE PLANNING

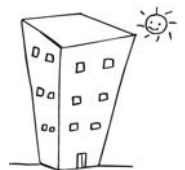
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### FIRST-TIME HOMEBUYERS

**First-time homebuyers** have a number of **incentives** including:

- Non-Refundable Tax Credit**  
The Income Tax Act provides a non-refundable tax credit based on \$5,000 (at 15% = \$750) for "**first-time homebuyers** who acquire a **qualifying home**" after **January 27, 2009**.



An individual will be considered a "**first-time homebuyer**" if neither the individual nor the individual's spouse or common-

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# Tax Tips & Traps

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law partner owned and lived in another home in the calendar year of the home purchase or in any of the **four preceding** calendar years.

The credit is also available for certain acquisitions of a home for the benefit of an individual who is eligible for the **disability tax credit**.

Any **unused portion** of the tax credit may be claimed by the individual's **spouse or common-law partner**. Where more than one individual is entitled to the tax credit (for example, where two individuals jointly buy a home), only **one credit** is allowed.

## 2. **RRSP Homebuyers' Plan (HBP)**

This **HBP** permits each **spouse** to withdraw up to **\$25,000** from his/her **RRSP** (**\$50,000 per couple**) if you or your spouse has **not owned** an **owner-occupied home** in the period beginning with the start of the **fourth calendar year before** the year in which you acquired the new home and ending **thirty-one days before** the acquisition of the new home. The thirty-one day rule allows a person to acquire the new home up to thirty days before the withdrawal. However, this condition is **not applicable** if the person is **disabled or** if you are purchasing a home for a disabled person.

The home must be purchased by **October 1** of the year after the year the amount was withdrawn. You must intend to occupy the

home as your **principal residence** within one year of acquiring it. However, once you live in the home as a principal residence, there is no minimum period of time that you have to live there.

You must repay the loan with a minimum of **1/15th per year** for up to fifteen years.

In a June 18, 2010 **Technical Interpretation**, CRA notes that a **mobile home** on leased land may be considered a **"qualifying property"** for purposes of the **HBP** assuming all other conditions are met.

## 3. **Land Transfer Tax Exemption**

Some provinces (for example, Ontario and British Columbia) have a **limited** exemption for **land transfer tax** for first-time homebuyers.

Another thing to consider is that a parent or grandparent may make a **non-interest bearing loan** to a child, for example, to assist the child in acquiring a personal asset such as a residence or a car. This avoids the **non-deductible interest expense** to the child. As there is no income earned on these personal assets, the **attribution rules are not applicable**.

If the loan is not repaid at the time of the parent's **death**, the Will could **forgive** that part of the loan. The **"debt forgiveness"** rules in the Income Tax Act **do not apply** to a bequest or inheritance.

Also, a **gift** to an adult child does **not** trigger the attribution rules.

## **ROLLOVER TO REGISTERED DISABILITY SAVINGS PLAN (RDSP)**

The Income Tax Act provides rules to allow the tax-deferred transfer (**rollover**) to a **RDSP** of certain amounts received from a **RRSP, RRIF** or Registered Pension Plan (**RPP**) as a consequence of the **death** of the annuitant or RPP Plan member.

To qualify for this rollover, the **beneficiary** of the **RDSP** must be a **child or grandchild** of the deceased, and have been **financially dependent** on the deceased by reason of **infirmity**. A qualifying beneficiary is referred to as an **"eligible individual"**. **Transitional rules** also provide access to the **rollover** in situations where the **deaths** of the RRSP or RRIF annuitant or RPP member occurred in **2008, 2009 or 2010**.

This applies after **March 3, 2010**. However, **"Specified RDSP Payments"** cannot be made until after **June 2011**.

## **2012 CANADA PENSION PLAN**

In a February 20, 2011 Release, Service Canada mentioned that **starting in 2012**:

- If you are **under age 65** and you **work in Canada** while receiving your CPP retirement pension, you and your employer will **have to make CPP** contributions.
- Between the **ages of 65 and 70**, you can **either chose** to make contributions or opt out. If you chose to make contributions, your employer will also have to contribute.

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- These contributions will **increase** your **CPP retirement benefit** through the post-retirement benefit.

If you are an employee or self-employed person who has contributed to the CPP and are thinking about retirement:

- Starting in **January, 2011**, your monthly **CPP retirement pension** will increase by a larger percentage if taken **after age 65**.
- If you start receiving your monthly CPP retirement pension in **January 2012** or later:
  - your monthly benefit amount will **decrease by a larger percentage** if taken before **age 65**;
  - you can take your **CPP retirement pension** without any work interruption; and
  - a longer period of **low or zero earnings** may be automatically **dropped** from the calculation of your pension.

### TAX FREE SAVINGS ACCOUNTS (TFSAs)

In a January 11, 2011 **CRA Newswire Release**, CRA notes that if a person contributed to a TFSA \$5,000 in 2009 and only \$2,000 in 2010, then you could contribute \$8,000 in 2011. This includes the \$3,000 unused contribution room from 2010 plus \$5,000 for 2011.

In another example, CRA notes that if you contributed \$5,000 in both 2009 and 2010 and then withdrew \$10,000 in November 2010, your contribution room for 2011 would be \$15,000. This is calculated using

your annual dollar limit of \$5,000 for 2011 plus the \$10,000 withdrawal made in 2010. **Withdrawals are not added back** to your **contribution room until after the end** of the year.

### Caution!

CRA also notes that if you have more than one TFSA, you can transfer funds **directly** from one of your **TFSAs** to another of your **TFSAs without affecting** your contribution room. The direct transfer **must** be completed by your financial institutions.

However, if you **withdraw funds** on your own from one TFSA and **contribute** those same funds to **another TFSA**, the **re-contribution** will be considered to be a **new contribution**. As a result, your **TFSA contribution** room will be affected and you may be subject to a **tax on excess contributions**.

If your contributions in a year exceed your TFSA contribution room, you will be subject to the TFSA tax on excess contributions of **1% per month** on your highest excess TFSA amount in each month. This tax will accumulate until the excess amount is withdrawn.

### FLOW-THROUGH SHARES

An investor who acquires **flow-through shares** of a corporation, usually involved in **mining or oil exploration**, may be entitled to receive up to a **100% deduction** for the exploration costs through a flow-through from the corporation. If, for example, the entire cost of the investment is passed on through tax deductions, the **adjusted cost base** of the investment would be **nil**.

If the shares are **publicly traded**

**securities**, a **donation** to a charity will result in a **charitable donation credit** equal to the **fair market value** of the donation and, the resulting **capital gain** will be considered to be **nil**.

### CHARITABLE DONATION SCHEMES

In a March 3, 2011 **Federal Court of Appeal** case, the Federal Court confirmed the Tax Court decision that the taxpayer was **not entitled** to claim **any charitable tax credit** for money which had been “**donated**” to the National Foundation for Christian Leadership (NFCL).

Under this Program, nearly all students who solicited the “**donations**” **received bursaries** for the expenses related to their education at Christian post-secondary institutions equal to approximately 80% of the lesser of the students’ expenses and the funds that they had solicited.

The Federal Court found the Appellants had received a **benefit** from their “**donations**” to NFCL because the student-recipients benefited from the bursaries.

The Court noted that a gift must be a **gratuitous** transfer of property for which **no benefit** flows to the donor.

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### GST/HST

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### GST/HST PLACE OF SUPPLY RULES

Clients often ask which sales tax, **GST or HST**, will **apply** in a particular situation. To answer them, we look to the GST/HST “**place of supply**” rules.



# Tax Tips & Traps

While these rules can get very complex, the best place to start is to look at the most **basic rules** for sales of **goods** and/or **services**.

For the **sale of tangible personal property** (“TPP”), the **general rule** is that a **supply** takes place in the province to which the vendor **delivers** the TPP, or where the vendor makes the TPP available to the purchaser.

If the vendor ships the TPP to a province on a **common carrier** that it has arranged itself, the destination province is the place of supply. But if the vendor ships the TPP to a province on a common carrier that the purchaser has arranged, the province where possession of the TPP is given to the common carrier is the place of supply.

Also, if a vendor sends the TPP via **mail or courier** to an address in a province, it is that province that is the place of supply.

This is why we often say that both **GST and HST** are “**destination-based**” taxes, and why it is important to determine that destination.

For a **supply of a service**, the general rule is that a supply takes place in the province noted in the **customer’s address**. In many ways, it will **not matter where** the service provider is located - the place of supply will be the **province** in the

**purchaser’s address**.

**Complexities** arise if you have **more than one address** for a customer (such as a head office address as well as a branch office address), or if the service is performed in more than one province.

Keep in mind that the GST/HST place of supply rules are **not integrated** with **provincial sales tax rules**. It is possible that **both GST/HST and PST** can apply to some services!

Remember...these are the most basic “**general**” rules for sales of **goods** and supplies of **services**. There are many scenarios that will fall outside the general rules. For a detailed discussion of these, look to CRA’s **Technical Information Bulletin B-103**, “*Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province*”.

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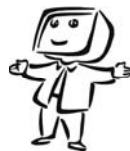
#### WEB TIPS

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#### GOOGLE INSTANT

As **letters and terms** are added and deleted in the Google Instant search box, **search results immediately appear and change**. This tool offers the benefit of **immediate feedback** as to whether the selected search terms are giving you the intended types of results



in addition to simply **speeding up the whole search process**.

You may be required to **update your browser** to the most current version to use this tool.

For more information, go to:  
<http://www.google.com/instant/>

#### GOOGLE DESKTOP

Google Desktop offers **desktop search capability for all items stored on your hard drive** and supplemental ports. This tool offers **similar types of results as the more basic Windows Desktop Search**, however, **speed of response is almost instantaneous** (similar to the normal Internet Google search tool). For more information, visit:  
<http://desktop.google.com/>

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#### DID YOU KNOW

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#### UNCLAIMED OAS, GIS

In a February 9, 2011 **Federal Tax Force Financial Literacy Report**, the Tax Force noted that about **160,000** eligible seniors did **not apply** to receive **Old Age Security**, representing almost \$1 billion in benefits. Another **150,000** eligible seniors did **not apply** to receive the **Guaranteed Income Supplement**.



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# Tax Tips & Traps

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