

FOR YOUR CONSIDERATION

In the 1st quarter of 2010

PERSONAL TAX

89(1)

HOME RENOVATION TAX CREDIT (HRTC)

In **Technical Interpretations**, CRA notes that:

- (i) Individuals may claim on their **2009 personal tax** returns a **15% tax credit** on renovations to an eligible dwelling in Canada to a maximum of **\$1,350** (\$10,000 - \$1,000 = \$9,000 @ 15%). Acceptable documentation will be needed.



Expenditures must be incurred from **January 28, 2009** to **January 31, 2010**.

- (ii) Renovations incurred in respect of **common areas** of a **condominium** will also qualify for the HRTC.

Therefore, the **HRTC** will be available for eligible expendi-

tures incurred to **renovate the condominium unit** as well as the **individual's share** of the costs in respect of **common areas**. The **condominium corporation** must provide **documentation** to **individual owners** for **their share** of the total cost of common area costs.

- (iii) **Examples** of expenditures that may qualify include **siding, eavestroughs, soffits, linoleum flooring, air conditioners, heat pumps, co-operative housing unit renovations, custom draperies, home security system, landscaping costs, an outdoor sauna building, solar panels, wireless broadband tower, waterlines, boilers, central air conditioning unit, renovations to a mobile home, hot tub cover gazebo, insulating the exterior of a house, wood-fired outdoor boilers, sandblasting of exterior brick, laying sod, a deck, solar panels, kitchen renovations, trees, perennial shrubs and flowers, attached shelving, etcetera**.

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However, the labour portion of work performed by the **owner of the house** does not qualify.

- (iv) Eligible expenses for **goods acquired** after January 27, 2009 and before February 1, 2010 will **still qualify even if** they are **installed after January 31, 2010**. If an eligible expense involves **work performed** by a contractor or a third party, and the work is **not completed** by the end of the eligible period, **only** the portion that is **com-**

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pleted before February 1, 2010 will **qualify** even if a payment has been made.

Also, there is **no requirement** that homeowners **pay the amount** in full **before the deadline**.

Acceptable documentation includes agreements, invoices and receipts that state:

- the **vendor/contractor**, their business address and their GST/HST Registration Number (if applicable);
- a **description** of the **goods** and the **date** when the goods were purchased;
- the **date** when the goods were **delivered** and/or when the work or services were performed;
- a **description** of the **work performed** including the address where the work was performed;
- the **amount** of the invoice;
- proof of **payment**;
- a statement from a **co-operative** housing corporation or **condominium** corporation signed by an authorized individual identifying the amounts incurred for the renovation or the alteration work, your portion of the expenses if the work is performed on common areas, information that identifies the vendor/contractor, their business address, and, if applicable, the GST/HST Registration Number, and a de-

scription of the work performed and the dates when the work or services were performed.

- (v) Payments to a new home builder for the cost of **upgrades** to a new home are **not eligible** for the HRTC if the upgrades were made by the builder **before title** passed to the purchaser.
- (vi) Qualifying expenditures **do not include** outlays or expenses made or incurred under the **terms of an agreement** entered into **before January 28, 2009**, even if the work is done after January 28, 2009.

See www.cra.gc.ca/hrtc for more information.

MEDICAL EXPENSES - TRAVEL

In an October 1, 2009 **Tax Court** of Canada case, the taxpayer lived in **Nanaimo**, British Columbia but had **bypass surgery** in **Victoria** and claimed **medical expenses** totaling **\$12,248**. The taxpayer was **certified** to be **incapable** of travelling **without** the assistance of an **attendant**.

Initially, CRA **disallowed** \$3,912 of medical expenses pertaining to expenses incurred by his accompanying **wife** for **accommodations and meals** in **Victoria** during the **eighteen days** that he was hospitalized for bypass surgery.

Taxpayer Wins!

The Court noted that **medical travel expenses** embrace not simply the cost of movement from one place to

another, but also the **attendant cost** of **living away** from home during the treatment period.

COMMON-LAW RELATIONSHIP

In a November 13, 2009 **Tax Court** of Canada case, the **issue** was whether Ms. B was in a **common-law relationship** with Mr. V which would have adversely impacted her **GST credit** and her **Child Tax Benefit** amounts. **Both incomes of common-law partners** are considered in determining if they qualify for these amounts.

The Court noted that the definition of **common-law partner** turns entirely upon whether the persons **cohabited** in a **conjugal relationship**.

The characteristics of shared shelter, sexual and personal behavior, services, social activities, economic support, children and societal perception are relevant, but not all are necessary. The weight given to each factor varies on a case-to-case basis.

Taxpayer Loses

The Court noted that she was in a **common-law relationship** because:

1. they regularly made meals for one another and did one another's laundry;
2. Ms. B did household tasks, they dined out together and went to functions such as bowling, and mini golf;
3. they had sexual relations on occasion and neither was seeing anyone else;

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4. they exchanged gifts at Christmas and birthdays;
5. they shared personal discussions and he assisted her with considerable personal and financial difficulties;
6. he was named on her car insurance as a driver of her car;
7. he provided financial support to her, and the neighbours regarded them as a couple; and
8. she sent letters to government authorities indicating that they were a common-law couple.

POST-SECONDARY STUDENTS OUTSIDE CANADA

CRA's December, 2009 **Guide RC190** provides information and forms to make a **claim** for the tuition, education, and textbook tax credits for **post secondary** education **outside Canada**.

EMPLOYMENT INCOME

89(2)

TRAVEL EXPENSES

In a September 9, 2009 **Tax Court** of Canada case, the teacher claimed **motor vehicle employment expenses** of \$5,272 in 2005 while employed as a **substitute teacher** with **Catholic** and **Public School Boards** in Peterborough. He travelled to **various schools** throughout the districts in that year.

The taxpayer received a **Form T2200** from the **Catholic School Board**, but **not** from the **Public School Board**.

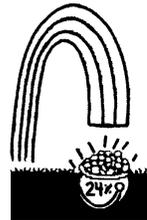
Taxpayer Wins - Sort Of!

The Court found that the **Catholic School Board travel expenses** were **tax deductible** on the basis that he was **required** to work **away from** the employer's place of business, and did not receive an allowance, and did receive a **Form T2200** - Declaration of Conditions of Employment.

However, the expenses related to the **Public School Board** were **not deductible** because the Public School Board did **not** provide a **Form T2200**.

SCHOLARSHIP/FREE TUITION

In a September 1, 2009 **External Technical Interpretation**, CRA notes that as a result of several recent Court Decisions, CRA **now accepts** that where an arm's length employer provides a **post-secondary scholarship, bursary or free tuition** to family members of an **employee** under a scholarship program, the amount will be included in the **student's income**, **not the employee's income**.



If the **student** is **eligible** to claim the **education tax credit** (post-secondary education) the **entire amount** may be **exempt** from tax.

With respect to employer-paid **training or educational assistance** for arm's length employees, CRA states that when the training is taken **primarily** for the **benefit** of the **employer**, there is **no taxable benefit** whether or not this training leads to a degree, diploma or certificate.

When an employee must **resume** his/her **employment** for a **reasonable period of time** after completion of the courses, CRA generally considers that the **employer** is **primarily** the one to benefit and, therefore, the amounts are **non-taxable** to the employee.

BUSINESS/PROPERTY INCOME

89(3)

GENERAL PURPOSE COMPUTER EQUIPMENT

A 100% Capital Cost Allowance (CCA) deduction rate applies to certain **general-purpose computer equipment**, including related **system software** and ancillary **data processing equipment**, that:

- is acquired after **January 27, 2009** and before **February, 2011**;
- is situated in **Canada**; and
- is acquired for the purpose of **earning income** in **Canada**.

In addition, the property must be **new**. An **example** of ancillary data processing equipment is a **printer** that is connected to a general-purpose computer such as a desktop or laptop.

Also, in a July 13, 2009 **External Technical Interpretation**, CRA notes that a restaurant **Point of Sale Computer System** generally **qualifies**.

TAX-DEDUCTIBLE INTEREST EXPENSE

A procedure of selling non-registered securities, using the proceeds to pay

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off a personal debt, and then re-borrowing to purchase securities may **create tax deductible interest** on the new debt.

This **conversion of non-tax deductible interest into tax deductible interest** has **complexities** which may require **professional assistance**.

BONUSES PAYABLE AND PAYROLL REMITTANCES

It is sometimes difficult to remember to make appropriate and **timely source deductions for remuneration** received from your corporation. However, failure to do so can carry **significant costs**.



Also, any remuneration **not paid within 179 days** of the end of the fiscal year in which it was **accrued is non-deductible** until it is paid.

The **best answer** is to ensure that the **source deductions** are **remitted** on a schedule that demonstrates **full payment** of the bonus **within 179 days** of the fiscal year end.

OWNER-MANAGER REMUNERATION

89(4)

DIRECTOR LIABILITY

Under the Income Tax Act, where a **corporation** has **failed** to remit **source deductions** or **GST/HST**, the **directors** at that time may be **jointly and severally** liable to pay **that amount** plus any **interest** or penal-

ties to CRA.

However, a director is **not liable** where the director exercises the degree of **care, diligence and skill** to prevent the failure that a **reasonably prudent person** would have exercised in comparable circumstances.



In addition, no CRA action may be made against the director if **more than two years** has expired after the director last ceased to be a director of that corporation.

MANAGEMENT FEES

In a June 30, 2009 **Tax Court** of Canada case, \$80,000 in **management fees** paid by the Appellant to a related company were considered **not** to be **deductible** on the basis they were **not incurred** to earn income from a business and were **not reasonable**.

The Court noted that the **lack** of any **written or verbal agreement** stating the **terms and conditions** of the services to be provided to the Appellant and the **absence** of the formalities required to create **real legal obligations** between the companies lead to the **disallowed deduction**.

MARRIAGE BREAKDOWN

89(5)

DISCLOSURE OF ASSETS



In a **breakdown of a marriage** where one of the

spouses is a **beneficiary** of a **Discretionary Family Trust**, the details of the **Trust interest** may have to be **disclosed** to the other spouse. This obligation may **override** the Trust's claim of **privacy and confidentiality**.

In one example, a **Discretionary Family Trust**, in which a **daughter** is a **beneficiary**, acquired a class of shares in the **family corporation**. Upon the **divorce of the daughter**, the parent Trustees have been in a **battle** with the **other spouse** with respect to the disclosure of the Trust assets, including the family corporation shares.

ARREARS

In an October 14, 2009 **Tax Court** of Canada case, the **issue** was whether a payment for **spousal support arrears** is **deductible** to the payor and **taxable** to the recipient.

The Court noted that a payment of **spousal support arrears**, whether in a lump sum or over time, **generally continues** to be **deductible**.

However, the result is **different** if the payment is **not** simply a payment of **arrears**. A recent example of this is where the taxpayer agreed to make a **payment** of **\$100,000** at a time when there were **arrears** in the amount of **\$370,000**. The Court concluded that the **lump sum amount** was paid to **obtain a release** from the liability to pay the **arrears** and that the character and the nature of the payment were, therefore, **altered**.

Whether a payment retains its character as a **payment of arrears** or

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something else is largely a **factual question** that depends on the circumstances.

CHANGE OF RELATIONSHIP STATUS

The **end of a marriage** or a **common-law relationship** has significant **income tax effects** including **support calculations**, and **property settlements**, in some cases.

It is fairly easy to determine when a legal **marriage** ends – the date of the divorce decree is stated in the legal documentation. The end of a **common-law relationship** can be more difficult to determine, or to plan around.

For income tax purposes, a **common-law relationship** comes into existence when two individuals cohabitate in a **conjugal relationship** and either have a child together or have cohabitated for at least a year. The relationship is deemed to continue thereafter unless they were **living separate and apart** at the particular time for a period of at least **90 days** because of a breakdown in their conjugal relationship. **Common-law partners** are, therefore, effectively **“divorced”** on the 91st day after a **separation**.

Also, when a **relationship** changes, **individual income** becomes relevant for determining eligibility for such programs as the **GST Credit** and the **Child Tax Benefit** instead of family income. Depending on the couple’s relative incomes, this could significantly enhance the entitlement to program payments.

The above definition of **common law**

status, like many other income tax definitions, applies **only for income tax purposes**. **Different statutes** apply different definitions, often under provincial rather than federal law.

PENSION BENEFITS

In a November 20, 2009 **External Technical Interpretation**, CRA notes that if a **division** of the **pension rights** occurs and each spouse has a **proprietary interest** in the pension benefits and is legally entitled to a portion of the pension income, **each spouse** is required to include in **income** their **respective share** of the pension benefits.

This applies whether pension benefits are received by **separate cheques to each** or by **one cheque** to the **pension plan member** with a distribution of half to the former spouse.

ESTATE PLANNING

89(6)

REGISTERED DISABILITY SAVINGS PLAN (RDSP)

An **RDSP** is a Trust arrangement to which **contributions** (up to \$200,000) can be made for the benefit of an individual who qualifies for the **Disability Tax Credit (DTC)** and is under **age 59**.

In addition, amounts are paid by the Government into an RDSP including **grants** (up to \$70,000) and **bonds** (up to \$20,000) under The Canada Disability Savings Act (CDSA) and the Canada Disability Savings Regulations (CDSR).

(For information search **“RDSP”** @ www.cra.gc.ca)

TAX-FREE SAVINGS ACCOUNTS (TFSA)

TFSAs have been available since **January 1, 2009** at \$5,000 per year. **Income** earned in these plans is **non-taxable**. (For more information search **“TFSA”** @ www.cra.gc.ca)



Generally, an individual’s **TFSA** will lose its **tax-exempt status** upon **death**. However, if a **spouse or common-law partner** is the **“successor account holder”**, the account will **maintain** its **tax-exempt status**.

Even though **TFSA**s provide for the designation of a **spouse or common-law partner** as the **“successor account holder”**, many financial institutions **did not provide** this on the initial application forms in early 2009. Today, every person can name the spouse or common-law partner as a **“successor account holder”** for their **TFSA** to obtain the rollover treatment on death. Therefore, persons that acquired **TFSA**s earlier in 2009 should consider **going back** to the financial institution and **complete** the **required Forms**.

ACQUIRING A MORTGAGE IN AN RRSP

A benefit of acquiring a person’s **mortgage** in an **RRSP** is that the **bank** may **charge, say, a 4%** interest rate on a five-year mortgage while **only paying 1%** on guaranteed investment certificates. This

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spread of 3% could be saved if a **self-directed RRSP** purchases the person's mortgage as an **eligible investment** with, say, a 4% rate of return. On a \$50,000 investment, the benefit would be \$1,500 per year.

For example, a taxpayer could acquire their **own mortgage**, or a **child's mortgage**, in an RRSP but they must first open a **self-directed RRSP**. Costs include **mortgage appraisal fees, legal fees, mortgage insurance** under Canada Mortgage and Housing Corporation, annual **mortgage administration fees**, and annual **self-directed RRSP fees**. Also, an **approved lender** from the National Housing Act must **administer** the mortgage and there may be additional costs in paying off a current mortgage.

Specific **professional assistance** may be needed.

REGISTERED RETIREMENT SAVING PLAN (RRSP) OVER-CONTRIBUTION

Where an individual has contributed a "**cumulative excess amount**" in respect of an **RRSP**, the individual must pay a **tax equal to 1% of that excess per month**. Therefore, **eligible contribution amounts** should be reviewed before making an **RRSP contribution**.

DONATION PROGRAMS

In a November 12, 2009 **Tax Court** of Canada case, the **issue** was whether the taxpayer was entitled to a **charitable donation tax credit** in respect of a \$100,000 payment made under an **arrangement** known as the

2001 Donation Program for Medical Science and Technology (The Program) marketed by **Trinity Capital Corporation (Trinity)**.

The Program involved "**leveraged donations**".

For example, based on a pledge of \$100,000, the Trinity Program would require a payment of \$20,000 to Trinity, an agreement to borrow, on a non-interest bearing basis, \$80,000 from a **wholly-owned** subsidiary of Trinity (**Capital Ltd.**), and an additional payment of \$10,000 to **Capital Ltd.** as **security** for a loan, a fee for arranging the loan, and a premium in respect of an **insurance policy**.

Taxpayer Loses

The Court noted that it is clear that the **Appellant did not make a "gift"** to the Foundation because a **significant benefit** flowed to the Appellant in return for the Donation. Therefore, the **entire donation tax credit** was **disallowed**.

NON-PROFIT ORGANIZATION (NPO) - EARNING A PROFIT

In a November 5, 2009 **External Technical Interpretation**, CRA note that an **NPO** may only **earn a profit** if it is **incidental** and generally **unanticipated**.

An **NPO** must be organized and operated "**exclusively**" for "**any other purpose except profit**", to be exempt from tax.

TEN-YEAR GIFT

In a December 4, 2009 **CRA Re-**

lease, CRA notes that receiving gifts with a **ten-year direction** can be a **useful way** for a **registered charity** to accumulate a **capital fund**, with the intention, for example, of using only the **interest income** to carry out its **activities**. The charity must ensure that each **ten-year gift** it receives is **tracked separately**.

A **Written Direction** must accompany the **gift**. The Direction must be signed and dated by the donor at the time the gift is made.

Example

I hereby give \$... to ABC Charity with the specific instructions that this gift, or any property substituted for it, be held by ABC Charity for a period of not less than ten years.

Signature of Donor

Date

FARMING

89(7)

ROLLOVER OF FARM TO CHILDREN ON DEATH

In a June 18, 2009 **External Technical Interpretation**, CRA notes that **farmland** and farm **depreciable property** may be transferred on a **tax-deferred basis on death** to a **child** of the taxpayer where:

- (i) the property was used **principally** in a **farming business** carried on in Canada in which the taxpayer, the spouse or common-law partner of the taxpayer, or a child or parent of the



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taxpayer, was **actively engaged** on a **regular and continuous** basis;

- (ii) the **child** was **resident in Canada** immediately before the day the taxpayer died; and
- (iii) as a consequence of the taxpayer's death, the property is transferred to and becomes **vested indefeasibly** in the child within **thirty-six months** after the taxpayer's death.

Professional assistance may be needed.

DID YOU KNOW...

89(8)

TAXATION OF OLYMPIC PRIZES

In a June 26, 2009 **Technical Interpretation**, CRA notes that **prizes awarded** to an athlete for winning at

the **Olympic Games** (other than the medals) are **taxable**. This also applies to the **prize money** that the Canadian Olympic Committee pays to Canadian athletes who win medals at the Games.

However, an amateur athlete who is a member of a registered Canadian Amateur Athletic Association and eligible to compete in International sporting events will be able to **defer paying tax** on this income.

FEDERAL GOVERNMENT EMPLOYEE - CONTACT INFORMATION

You can search for an **employee** within the **Federal Government** by visiting the Government Electronic Directory Services. It lists the names, titles, telephone numbers, fax numbers and mailing addresses of departmental employees.

<http://sage-geds.tpsgc-pwgsc.gc.ca>

TAX EVASION

In December, 2009, National Revenue Minister Jean-Pierre Blackburn said that **90** people have **Voluntarily Disclosed** their **Swiss Bank UBS** accounts to Ottawa. The government has reached deals with 44 of them raising an extra \$15.3 million in tax revenue in the process. CRA are still discussing with UBS and other authorities to try to obtain a list of Canadians who have accounts in tax havens abroad.

As of December 2, 2009, 6,798 Canadians have made **Voluntary Disclosures** to CRA since January 1, 2009 disclosing \$1.66 billion of assets.



The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a commentary such as this, a further review should be done. Every effort has been made to ensure the accuracy of the information contained in this commentary. However, because of the nature of the subject, no person or firm involved in the distribution or preparation of this commentary accepts any liability for its contents or use.

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