

## FOR YOUR CONSIDERATION

### In the 4th quarter of 2013

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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!*

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#### TAX TICKLERS ... some quick points to consider...

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- You may be able to save approximately 2% in personal taxes if you declare, and pay “non-eligible dividends” in 2013, rather than 2014.
- Receiving government loans can reduce Scientific Research and Experimental Development Credits.
- Considering the purchase or sale of a business? Taxation relating to Restrictive Covenants (ex. non-competition clauses) has changed.

If any of these items are applicable, contact us for further details and planning possibilities.



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#### GIFTS TO EMPLOYEES: Non-Taxable?

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According to the CRA:

1. Up to **\$500 in gifts and awards per year per employee can be paid out as a non-taxable benefit** under the CRA's “gifts and awards policy”.

A “**gift**” is defined as recognition of a **personal event or milestone** in an employee's life, such as a birthday, marriage, retirement or the birth or adoption of a child, or as recognition of a public or religious holiday where gifts are traditionally exchanged, such as Christmas or Hanukkah.



An “**award**” has to be for an employment-related accomplishment such as outstanding service, employees' suggestions, or meeting or exceeding safety standards. **Performance based “awards”** (such as exceeding production standards, completing a project ahead of schedule or under budget, putting in extra time to complete a project) do **not benefit from the exemption** and are therefore **taxable benefits**. The difference between a regular “award” and a performance based “award” is very slight and very grey. As such, the safest way to make a tax efficient payment to an employee is as a “gift” described above.

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2. The “gifts and awards policy” also only applies to non-cash items. **Cash, and near-cash items** such as gift cards and gift certificates, are not included in the policy and are always **taxable**, regardless of the reason they are given.

The rules in **Quebec** are slightly **different**.

3. The “gifts and awards policy” **cannot** be used against **taxable** parking or employer-provided transportation because the policy cannot be used to make otherwise taxable benefits non-taxable.
4. **Prize draws or lotteries** are **not included** in the “gifts and awards policy”. Generally, where all, or a majority of, participants in an **employer-promoted contest** are employees and their family members, any **winnings** are considered a **taxable** employment benefit.

Whether winnings from a prize draw held by a **social committee** is a taxable benefit depends on whether the social committee is funded or controlled by the employer.

**Action Item:** See [www.cra.gc.ca/gifts](http://www.cra.gc.ca/gifts) for specific details.

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## ARTS AND FITNESS CREDITS: The Separate Receipt Issue

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In an April 13, 2013 **Ministerial Correspondence**, CRA noted that a specific **program cannot qualify for both** the Children’s Fitness Tax Credit (CFTC) and the Children’s Arts Tax Credit (CATC). However, they acknowledged that an Organization **may offer distinct programs**, some of which qualify for each credit. They indicated

such Organizations should either issue separate receipts, or a single receipt that clearly **segregates the amounts** paid for each program.

**Action Item:** *If your child is enrolled in more than one program with an organization, ask for a separate receipt for each program.*

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## EMPLOYEE EXPENSES: Not Deductible?

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In a July 9, 2013 **Tax Court of Canada** case, a **group home counselor** took residents of the group home shopping, to medical appointments, and to recreational activities as part of his employment duties. The **employee argued** that it was an **implicit term** of his contract that he incurs expenses for the use of **his own personal vehicle** and, therefore, the amounts should be deductible on his personal tax return.



### Taxpayer loses

The taxpayer’s manager noted that many employees do not use their own vehicle for transporting residents and instead take a taxi or public transportation.

Because the employee was **not required** under his contract of employment to use his vehicle, the Court **disallowed** the expenses.

**Consideration Item:** *This may apply to a wide range of employees, including those who have received T2200s from their employers. A T2200 (Declaration of Conditions of Employment) is the form signed by employers that allow employees to deduct certain employment expenses from his or her income.*

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## GETTING AUDITED: Net Worth Assessments

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In a May 14, 2013 **Tax Court of Canada** case, two taxpayers carried on a **fishing business** that was being audited. The CRA auditor applied a net worth calculation to estimate their earnings because he was unable to reconcile the income from the accounting records to the growth in their assets, largely fishing licenses.

### Taxpayer loses

The taxpayers argued that the CRA should not have used the net worth method, but confined their review to the accounting records. The Court noted that maintaining accounting **records** is not sufficient - they **must be reliable, credible and accurate** - and the **disparity** between the growth of their assets and the income reported justified use of the **net worth method**.

**Action Item:** *Maintain reliable accounting records!*

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## CRA ATTACK: Condo Sales

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It has been noted recently in several news articles, that the CRA has increased activity in reviewing **condominium sales**. It appears that CRA is reviewing **land titles records** to identify short-term condo holds. In such cases, CRA reassesses the gains as “**ordinary business income**” on the assumption that the **vendor’s intention** was always to **resell** or flip the condo at a profit.



principal residence.

While this may be true in some cases, in others the intent was to reside in the property for an extended period. In such cases where the intent was not business in nature, the sale may be considered a capital gain (taxed at half the rate of “ordinary business income”) or no gain at all if qualifying as, and determined to be, a

CRA seems to have adopted a policy of “reassess and penalize first, and ask questions only if the taxpayer objects”.

**Action Item: If you have received such a reassessment, contact us immediately so that an Objection can be filed. Objections need to be filed within 90 days of the date on the Notice of Reassessment.**

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## OLD AGE SECURITY: Defer It?

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The 2012 Federal Budget introduced provisions whereby an individual can **delay** receiving their **OAS** for up to **five years** after age 65. Commencing July 1, 2013, a compensation of **0.6% per month** of delay is provided to compensate for the deferral of the OAS pension payments.

This flexibility may permit a person to **reduce**, or **eliminate**, the **OAS clawback** by deferring the receipt of the OAS until the income of the person is below the net income threshold (\$70,954 for 2013).



In general, the taxpayer does not need to take any specific action to defer commencement of the OAS receipts. The person simply would **not apply for OAS** until he or she wishes to receive the payment. An **OAS application** may be retroactive to as much as eleven months.

Note that the Government may **send a letter** notifying a 64 year old individual of the ability to apply for the **OAS at age 65**.

**Consideration Item: An individual who has received OAS benefits for less than six months may cancel the benefits and begin the deferral by paying back the total OAS received. This could apply even if the individual has not received any net OAS payments because of a full clawback.**

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## FOREIGN PROPERTY: New Information Needed

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Corporations and individuals holding “Specified Foreign Property” (which generally includes investment assets like rental properties or foreign stocks) with a cost of \$100,000 or more must complete and submit a T1135 - Foreign Income Verification Statement. A new version of this Form, which requires significantly **more detailed information**, was released on **June 25, 2013**. The name and location of the investment, the maximum cost amount in the year, the cost at year-end, the income (or loss) in the year, and any gain (or loss) on disposal must be reported. Each of these items needs to be reported on an investment-by-investment basis. For example, information relating to each of the stocks within a brokerage account would need to be reported (as opposed to details on the brokerage account as a whole). An exemption from the detailed level of reporting is available if income from the investment is reported on a T5 or T3 Slip.



The federal government also announced a **three year extension of the normal allowable reassessment period** where this Form is not filed when required, or the required information is not properly disclosed.

**Action Item: If foreign investments are held, prepare a summary of investments including the aforementioned components to reduce the accounting costs associated with the additional disclosures.**

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## WEB TIPS: CRA's YouTube Channel, bizpal.ca

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### CRA's YouTube Channel

The CRA hosts a **YouTube channel** which provides a wide range of **short video clips** on various **personal tax topics**. The video clips are generally basic and easy to understand. Some of the topics include: Children's Fitness Tax Credit, E-services for Individuals, Pension Income Splitting, and Direct Deposit. To find the channel, go to YouTube.com and search for “CRA Channel”.

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### **BizPal.ca**

BizPal, [www.bizpal.ca](http://www.bizpal.ca), is a free online service providing a database to simplify the process for determining the **permit and license requirements** to start and operate a **business in Canada**.



This online tool will prompt you for information pertaining to the business, including the location and industry, to populate a **list of permits** that may be required. **Entrepreneurs, accountants and individuals involved in any type of organization**, even charities and NPOs, may **benefit** from this website.

The service is jointly managed by the **federal government**, most **provinces and territories** (excluding Quebec and Nunavut), and **numerous municipalities**. If a community is

not included in the online service, one should contact their respective jurisdiction for requirements.

Each participating jurisdiction will manage and determine which **industry sectors** to incorporate into the online service and subsequently **identify various permits and licenses** required.

Note that this website may not be all inclusive and the user should still conduct their due diligence to ensure regulatory compliance.

**Action Item:** *Check this site before, rather than after, incorporating your Company to ensure that all angles are covered.*

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.

Although every reasonable effort has been made to ensure the accuracy of the information contained in this newsletter, no individual or organization involved in either the preparation or distribution of this letter accepts any contractual, tortious, or any other form of liability for its contents.

For any questions... give us a call.

# **Tax Tips & Traps**