BBLLP Tax Tips

BBLLP Tax Tips is a quarterly publication designed to provide general information about significant tax news and updates. You can find all editions of this publication on our website located here.

CRA Collections: Potential Impact on Business

As some **businesses struggle** with **cash flow**, they may be motivated to prioritize suppliers and other creditors ahead of CRA. A recent court case demonstrates **CRA's power** to **collect tax** arrears and the **impact** of CRA exercising this power **on** a **business**.

In a June 11, 2021 Court of Queen's Bench of Alberta case, the taxpayer had **fallen into arrears** in respect of both GST/HST and payroll remittances. **Payment arrangements** were entered into with CRA to assist in meeting the obligations. However, after failing to meet the agreed-upon terms, **requirements to pay (RTPs) were issued** to several of the **taxpayer's clients**.

RTPs are **legal documents** that **require recipients** (the taxpayer's clients in this case) to **submit payment to CRA** rather than the taxpayer. The RTP gives priority to CRA over most other creditors.

After the taxpayer had renegotiated a new payment plan, all **RTPs were cancelled except** for the one to its **largest client**. After struggling to meet the new payment plan and facing a new withholding liability, **CRA once again issued RTPs**. Shortly after, the **taxpayer lost its largest client** (the one that the sole RTP had been issued to previously).

The taxpayer advised CRA that it was **considering receivership**, which led to the **seizure of assets and issuance** of more **RTPs**. One **client** sent a **letter to the taxpayer** that noted that CRA had **visited them personally** to serve the RTP and **implied** that the taxpayer could be **out of business** or shut down. Further, the client noted that they were asked by CRA whether they could get their parts from alternate suppliers, and the client indicated that they were now considering doing so.

Taxpayer loses

The court found that **CRA** and its agents did **not owe a duty of care** to the taxpayer, that there was **no negligence**, and that the government's actions did **not unlawfully interfere** with the economic relations of the taxpayer.

ACTION ITEM: CRA can collect your tax liability by requiring your clients to pay them rather than you. To limit the business and operational issues arising from an RTP, steps should be taken proactively to communicate with CRA collections.

Travel Allowances: Limited Distance Covered

In a March 5, 2021 French Technical Interpretation, CRA commented on whether a **travel allowance paid** to employees on a per kilometre basis, but only up to a **limited number of kilometres**, could be a non-taxable allowance.

For the allowance to be **non-taxable**, it must be a **reasonable allowance** for the use of a motor vehicle when travelling in the **performance of employment duties**. Further, measurement of the use of the vehicle must be based solely on kilometres, or the allowance will be deemed unreasonable and therefore taxable.

First, CRA opined that **placing a cap** on the number of kilometres covered would **not mean** that the measurement was **not based solely on kilometres**. As such, it would not automatically be unreasonable.

However, the allowance could still be **unreasonable** since it may **not be high enough** in relation to the total motor vehicle **expenses** that the employee is **expected to incur** in the performance of their employment duties. If considered unreasonable, the allowance would be **taxable**.

ACTION ITEM: Structure compensation for the employment use of an employee's vehicle carefully to ensure that any allowance received will not be taxable to the employee. A taxable assessment after the fact can create significant employee/employer issues.

Covid-19 Medical Expenses: Tax Treatment

Medical expenses eligible for a **personal tax credit** are limited to those **specifically provided** for by the **Income Tax Act**. While an expense may clearly relate to an individual's health, it may still not be an eligible medical expense. CRA recently

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provided comments on a number of medical expenses related to COVID-19.

Face masks
In a February 25, 2021 Technical Interpretation, CRA opined that the costs of a **non-medical mask**, that is mostly used to **protect others from the wearer**, would **not likely qualify** as a medical expense. However, in the specific situation where a medical practitioner **prescribes a medical face mask or respirator** for a patient to cope with or overcome a **severe chronic respiratory or immune condition**, the mask or respirator would likely be an eligible medical expense.

COVID-19 vaccines and tests
In an April 22, 2021 Technical Interpretation, CRA opined that a **COVID-19 vaccination** received outside of Canada and a **COVID-19 test** (for example, those required for travel) must be **prescribed** by a **medical practitioner** to potentially be eligible as a **medical expense**. CRA also reiterated that they do not have the discretion to waive the prescription requirement.

Leasing costs of temporary accommodations
In a January 19, 2021 Technical Interpretation, CRA stated that the **leasing cost** of a second **condominium** to **protect** a family member's **health** during the **COVID-19** pandemic does **not qualify** as an eligible **medical expense.**

ACTION ITEM: Although expenses may relate to an individual's health, they should still be reviewed to determine eligibility for the medical expense tax credit. Collect medical-related expenditures throughout the year such that at personal tax time, we can review whether an expense is eligible or not.

TFSA: Excess Contributions

Individuals who contribute **excess amounts** into their **TFSA** are subject to a **penalty tax** of **1%/month** on the excess amount for each month that the TFSA is overcontributed. However, CRA has the discretion to **waive this penalty tax** if the excess amount resulted from **reasonable error** and the **excess contribution**, plus any income or capital gains reasonably attributable to them, is **withdrawn without delay**.

CRA recently considered whether **relief** on this **penalty tax** could be provided where the **value of the TFSA** had reduced to **nil**. They opined that, as the **excess contribution could not be withdrawn** without delay, they **would not have** the **discretion** to **waive the penalty tax**. As such, the **penalty tax** would continue to **apply** until the individual accumulated **enough additional TFSA room** to cover the excess contribution.

ACTION ITEM: Under the facts above, CRA does not believe they have the discretion to waive the penalty tax on an excess TFSA contribution. Even where they have that discretion, they often refuse to waive the tax. Care should be afforded to ensure not to make excess TFSA contributions, and if an error is made, it should be corrected as soon as possible.

Will and Beneficiary Designations: Are They current?

RRSP designations
A May 10, 2021 CBC article demonstrated the **importance** of **reviewing RRSP beneficiary designations**. The article discussed the unfortunate cascade of events where, in 2018, a **50-year-old** individual went to the hospital for stomach pain and was diagnosed with cancer. He **passed away three weeks later**, leaving a spouse and a child. It appeared as if the deceased had **not reviewed the designated beneficiary** on his $685,000 RRSP, which **remained his mother** from the time when he had originally set it up while single. Not only did this mean that **the surviving spouse and child** would not receive these **savings**, but also that they were effectively **liable for the tax** on the RRSP funds. Although the **will included a clause** making the spouse the 100% beneficiary of the estate, this did **not override** the **RRSP** beneficiary **designation**.

While the spouse and mother were able to settle and cover the tax bill with the proceeds of a life insurance policy, the case serves as a good **reminder to review** whether **insurance** and **registered account** beneficiary designations match the current intent of the parties.

Wills
In a March 16, 2021 Ontario Court of Appeal case, a dispute arose over the interpretation of a will regarding how **proceeds from the sale of a cottage** were to be distributed. As the deceased's daughters held a life interest in the cottage, the cottage was not sold until more than 40 years after the original owner's death. The proceeds from the sale of the cottage were to go to the grandchildren. However, within the 40-year period, **one of the grandchildren passed away**. At issue was whether the proceeds should be split among the **four surviving grandchildren**, or in **five parts**, with the deceased grandchild's estate and beneficiaries receiving a fifth.

The court used the **"armchair rule,"** which seeks to interpret the will using the **same knowledge** that the testator had when **making the will**, and determined that it should be **divided into four**.

ACTION ITEM: Ensure to review wills and beneficiary designations when major life events or changes in the family occur. Death or critical illness/injury can arrive unexpectedly, limiting the possibility of estate planning updates that can compound the emotional strife of loved ones after an individual's passing.

CRA or Scammer: Who is it?

Most, if not all of us, have received a **call** from someone **claiming to be from CRA**. They may threaten arrest or other such actions if a tax bill is not immediately paid via iTunes or Bitcoin, for example. While some of these calls have become easier to identify as fraudulent, scamming techniques and systems constantly evolve.

On May 26, 2021, CRA released a Tax Tip which discussed **why** a taxpayer might be contacted by CRA, **when** to be **suspicious**, and **how** to **report potential scams**.

Some **signs** indicating that the caller may be a scammer include:

- they do not provide **proof of CRA employment** (such as a name and an office location);
- they **pressure** you to **act immediately**;
- they ask you to **pay with gift cards**, cryptocurrency or some other unusual manner;
- they **ask for information not normally** included on your tax return or not related to amounts owed CRA, such as a credit card number; and
- they **recommend** you apply for **benefits** and ask for related information.

To **verify** a caller is a CRA employee, CRA recommends that an individual:

- **tell** the caller that they first want to **verify** their identity;
- **ask** for, and note the caller's **name**, phone number, and office location;
- **call** the **CRA** phone number from the official CRA website to confirm that the call was legitimate; and
- **call** the CRA **employee back**.

To **report a scam**, go to antifraudcentre.ca or call 1-888-495-8501.

ACTION ITEM: Follow these instructions if you suspect a call is from a fraudster or scammer. Give us a call if you are uncertain how to respond to a call from CRA, whether or not it sounds legitimate.