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## The Tax File

Issue 91

2010 Third Quarter

### PERSONAL TAX

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#### CAREGIVER CREDIT

The Income Tax Act (ITA) provides a **caregiver federal tax credit** of up to \$633 for 2010 (\$4,223 x 15%) plus a **provincial tax credit** for individuals **residing with** and providing **in-home care** to a parent or grandparent (including in-laws) 65 or over or an infirm dependent relative. The federal credit is **reduced by 15 cents** for each dollar of the dependant's net income over **\$14,422 in 2010**.



#### MEDICAL EXPENSE - WEIGHT LOSS PROGRAM

In a **Technical Interpretation**, CRA notes that fees charged for a **weight loss program** qualify as **medical expenses** if the **services** are **diagnostic, therapeutic, or rehabilitative** and are **provided by medical practitioners**.

A "**medical practitioner**" is a person who is authorized by a province or other jurisdiction to act as a "medical practitioner".

#### MEDICAL EXPENSES - COSMETIC PROCEDURES

The **2010 Federal Budget** notes that **purely cosmetic procedures** are **no longer eligible** to be claimed as **medical expense tax credits**. This generally includes **surgical and non-surgical** procedures purely aimed at enhancing **one's appearance** such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

#### MEDICAL EXPENSES - TRAVEL - AEROPLAN FREQUENT FLYER POINTS

In a **Tax Court** of Canada case, the taxpayer "purchased" an airline ticket from Thunder Bay to Chicago to obtain **medical treatment** by redeeming **Frequent Flyer Points**. In addition, the Appellant **paid taxes** of **\$220** on the ticket.

The value of the **Frequent Flyer Points** plus the \$220 was allowed as a **medical expense**.

#### UNIVERSITY OUTSIDE CANADA

The ITA also provides a **tuition credit** where the individual is a student in **full-time attendance** at a **university outside Canada** in a course leading to a **degree**.

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#### CHILD CARE EXPENSE (CCE) - PAYMENT TO YOUR SISTER

In a **Technical Interpretation**, CRA notes that where a taxpayer pays his **sister** (age 18 or over) to take care of his child while he is working, the amounts paid will likely be **CCEs** on the basis that they are **only prohibited** with respect to payments to the child's **father or mother**, a **supporting person** of the child, or a person who is **under eighteen** years of age and **related** to the taxpayer, or a person in respect of whom the taxpayer or supporting person has

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deducted a **tax credit**.

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## EMPLOYMENT INCOME

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### EMPLOYEE BIRTHDAY GIFTS

In a **Technical Interpretation**, CRA notes that **gifts to employees from employers of up to \$500** are **tax-free** as long as they have **not** been given to **non-arm's length employees** and are **not performance-related awards** (e.g. sales targets) or **cash and near-cash awards**.



**Birthday gifts** of up to \$500 would qualify for the **non-taxable** amount.

If the value of the gift is **over \$500** then the **excess** would be taxable.

### SPORT FACILITY PAID BY THE EMPLOYER

In a **Technical Interpretation**, CRA notes that a benefit related to the payment or reimbursement of **sports facility dues** by an employer, must be included in the employee's income if the **employee**, not the employer, is the **primary beneficiary**.

#### Editor's Comment

Membership in a facility, which is mainly for **client promotion**, may be considered as primarily to the advantage of the employer and may **not** be a **taxable benefit**.

### HOME PURCHASE LOAN

An **employee** may **borrow funds** from an **employer** to **acquire a home**, or to **repay** a loan or debt (**refinance**) that was received to acquire a home. There will be **no taxable benefit** as long as the **interest charged** by the employer is equal to the **prescribed interest rate** at the time the loan is taken out by the employee (currently 1% until at least September 30, 2010).

### PRIVATE HEALTH SERVICES PLAN (PHSP)

In a **Technical Interpretation**, CRA notes that an employer may **deduct** its contributions to a **PHSP** and the **benefits received** by employees will **not** be included in **income**.

A **PHSP** is a contract of **insurance** for expenses that would normally qualify as **medical expenses**. A **Cost-Plus Plan** can be considered a **PHSP** if it contains the basic elements mentioned above.

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## BUSINESS/PROPERTY INCOME

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### EMPLOYMENT INSURANCE BENEFITS FOR SELF-EMPLOYED PEOPLE

**Self-employed persons** will be able to enter into an **agreement** with **Service Canada** to access four types of special **Employment Insurance (EI)** benefits:



- **maternity** benefits;
- **parental** benefits;
- **sickness** benefits; and
- **compassionate** care benefits.

To enter into an agreement with Service Canada, you may register online using My Service Canada Account. If you enter into an agreement after April 1, 2010, you will have to wait **twelve months** before you will be able to **make a claim** for EI special benefits.

**Self-employed persons** also include persons that own more than **40% of the voting shares** of a corporation and are, therefore, otherwise, exempt from participating in the Employment Insurance Program.

**Self-employed persons** just pay the **employee portion** of EI premiums.

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## OWNER-MANAGER REMUNERATION

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### EMPLOYEE PROFIT SHARING PLAN (EPSP)

In an **Employment Insurance (EI)/Canada Pension Plan (CPP)** case, the Court found that payments made through an EPSP for the **owner-manager** were **not** subject to EI or CPP.



### PERSONAL LIABILITY

In a **CRA Release**, **CRA** warned

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that businesses are required to hold **source deductions** and **GST/HST** amounts in **trust** for the Government.

CRA can **collect** these **unremitted** amounts through **garnishments**, assessment of the **directors**, **seizure** and sale of assets, and any other means of recovery allowed under Federal Legislation.

CRA notes that taxpayers that have not complied may make a **Voluntary Disclosure** and will **not** be **penalized** or **prosecuted** if they make valid disclosures **before they become** aware of any CRA compliance action against them. Taxpayers may only have to pay the taxes owing, plus interest.

### **DIRECTOR LIABILITY - DE FACTO DIRECTOR**

In **Tax Court** of Canada case, CRA **assessed** the taxpayer for the corporation's **unpaid GST of \$14,455** because she was **listed** as a **director** in the records of the company.

The taxpayer noted that she was **never elected** as a **director** and this was all a mistake. However, CRA said that, in any event, she was still a **de facto director** because she was **acting as a director**.

#### **Taxpayer Wins!**

The Court found that the taxpayer was **not elected** as a **director** of the corporation and did **not** act as a **de facto director**.

### **DIRECTOR LIABILITY - DUE CARE AND DILIGENCE**

In a **Tax Court** of Canada case, **Antonio**, the **father** of Tony, was assessed personal liability for **unpaid source deductions**, interest and penalties of over **\$651,000** and **unpaid GST** of over **\$191,000**.

#### **Taxpayer Wins!**

The Court noted that **Tony**, the **son**, was the **one who controlled** the company and **intimidated** his **father Antonio** with respect to the **directorship role**. The Court concluded that Antonio, with his **limited commercial experience**, reasonably trusted, and relied on, his son. Therefore, Antonio was held **not to be liable** on the basis that he exercised the required **due care and diligence**.

### **DIRECTOR LIABILITY**

In an **Ontario Superior Court of Justice** case, Mr. Adams took action for **indemnity** against various Defendants for \$217,243 he was **required to pay** to CRA as a **director** for **unpaid GST** and **source deductions** on behalf of the corporation.

Mr. Adams alleged that the **Defendants** were **officers and directors** of the corporation and that they failed to ensure the corporation made the proper remittances to CRA.

#### **Mr. Adams Loses**

The Court found that the Defendants were **not directors** at the time the debts arose and, even if they had been, the Court noted that they

**exercised due diligence** under the Act and would **not** be **liable** in any event.

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### **ESTATE PLANNING**

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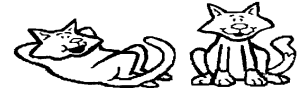
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### **NON-PROFIT ORGANIZATION (NPO) - FILING REQUIREMENTS**

In a **Technical Interpretation**, CRA notes that **NPOs** may be **corporations** with share capital, corporations without share capital, or **unincorporated** entities. The **filing requirements** for these associations are similar to taxable organizations.

### **TRANSFER OF CAPITAL LOSSES BETWEEN SPOUSES**

In a **Technical Interpretation**, CRA confirmed that it **still accepts** the **transfer of latent capital losses** between **spouses**.



### **HOME BUYERS PLAN (HBP)**

In a **Technical Interpretation**, CRA notes that up to **\$25,000** may be withdrawn from an individual's **RRSP** to buy or build a **qualifying house (first-time buyer - a four-year test)**.

CRA also notes that if an individual buys a qualifying house with **his/her spouse**, they can **each withdraw** up to **\$25,000** from their RRSPs for a **combined amount** of up to **\$50,000**.

Under the **HBP**, the individual has to **repay** all **withdrawals** to his/her

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RRSP within **fifteen years**.

## RRSP/RESP/RRIF - QUALIFIED INVESTMENTS

In a **Technical Interpretation**, CRA notes that shares of **small business corporations** may be **qualified investments** provided that certain conditions are met including, **immediately after the acquisition of the share**, each person who is an annuitant, a beneficiary or a subscriber is **not a connected shareholder (a 10% test)**.

## CHARITIES CONNECTION

**Charities Connection** is a new **CRA electronic publication** that gives charities timely information on technical issues, new guidance and policy changes, Charities Directorate initiatives, and reminders.

For example, **Charities Connection No. 2** provides **information** to charities on the **payroll process**, determining the employment status of charity workers, what is included in employees' income, withholdings, remittances, and reporting.

For more information Google "charities connection".

## FAMILY TRUSTS

Recently CRA have been **auditing Family Trusts**.

A **Family Trust** may be used to provide **control** of the assets to the **Trustees** rather than the beneficiaries, **reduce probate fees** by getting the assets out of the Estate, **preventing** the assets from being part of the **public record** in a death, and providing **income**

**splitting** with family members. However, Family Trusts must be **properly established and operated**, hence the CRA audits.

## TAX-FREE SAVINGS ACCOUNTS (TFSA) - OVER-CONTRIBUTIONS

Taxpayers must be careful not to **inadvertently** subject themselves to **TFSA penalties**. For example, if a taxpayer put \$5,000 into Bank 1 in January, 2009 and withdrew that amount and then put \$5,000 into Bank 2 in February, 2009, the penalty is 1% per month (\$50 per month or \$600) because the taxpayer had excess contributions of \$5,000 for the twelve months. This is because the **withdrawal does not get credited** until the **following year**. If it is considered **deliberate**, there is an additional penalty of **100%** of any income or gains resulting from the deliberate over-contribution.

## CRA TFSA PENALTY RELIEF

CRA announced that they will consider **waiving the tax on excess TFSA contributions** if the taxpayer **genuinely misunderstood** the operation of the rules.

CRA sent out over **70,000 letters** to persons who have technically had over-contributions in **2009**.

If a taxpayer receives a Notice of Assessment, they may **object or request a waiver of the taxes** on excess contributions under **Taxpayer Relief**.

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## WEB TIPS

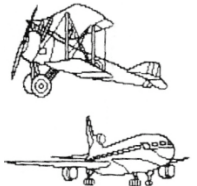
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## FLIGHT TRACKING

www.flightaware.com

If you fly often, or find yourself frequently at the airport dropping off or picking up loved ones, check this site out.



This site has a tool that allows you to **track almost any commercial flight in North America**. At any point in the flight you **can see exactly where the airplane is** using one of the three modes (classic, earth view, aviation sectional). Other useful aspects include the ability to **see revised estimated times of arrival**, the **weather on the flight path**, and **general delays that specific airports are facing**.

If you don't know the exact flight number, that isn't a problem. Available is a **tool that allows you to find flights based on departure/arrival locations** and other pertinent details.

## LONG DISTANCE CALLING FROM CELL PHONES – SKYPE TO GO

This service is useful for all **cell phone users** but particularly those **that don't have data plans** (or not very robust ones). Basically, you

1) create a Skype account (free),

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- 2) you then follow the steps to select/**set up a phone number** (this is now your Skype to Go number), and
- 3) you buy credit or select a usage plan.

From this point you just **dial your Skype to Go number** from your cell phone whenever you want to make a long distance call. You will then be greeted with a message asking whether you want to **enter the long distance number** or **select from your contact list**. You make your selection and then are **instantaneously connected**. At the end of the day you only pay your **normal local cell phone rate** plus a **very minimal long distance charge/connection fee** (usually less than 6 cents/per minute).

Tip – You can also use the **Skype to Go** number from **land lines** and other cellulators. In essence you could set up a family long distance plan that could be accessed from all of your cell phones (if in the same area code).

### LONG DISTANCE CALLING FROM SMART PHONES (IPHONE, BLACKBERRY, ETC.)

There are **applications available**, usually for free, for all of these types of phones such as “Skype” and “iCall”.

To find the one that works best for you, consider researching online by viewing application ratings at sites such as:

iphoneappreviews.net or  
iPhoneapppodcast.com

To get this service: Go to Skype.com. Click “on your mobile”, and then select “Set up your number now” under the “Skype to Go” heading.

### HOW TO CHOOSE YOUR NEXT SMART PHONE

<http://tryphone.com/home.seam>

This website offers the user the ability to get a **close up view of the newest smart phones on the market**. Upon selecting the type of phone that you are interested in, you are presented with an **expanded view of the phone** with the principal screen showing. From there you can **interactively click on the phone’s screen (on any of the applications or other buttons)** so as to actually **review the phone’s interface and capabilities**. In addition to interactive phone, **reviews, specifications, and demos** are available.

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### GST/HST

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### CREDIT CARD EXPENSES REIMBURSED

CRA introduced a **Guide** which notes that where **expenses are reimbursed** by an employer, the employer may claim an **Input Tax Credit (ITC)** for the **GST/HST**. CRA allows a Registrant who is an employer, partnership, charity or public institution to **use factors** to calculate **ITCs** in respect of the **GST/HST** deemed paid by the Registrant on purchases made by the Registrant’s employees, partnership members, or volunteers where **credit**

**cards** have been used to make purchases.

The use of **factors** is to **simplify** the administrative burden Registrants have because **credit card receipts** are often a **one-sum total** and include gratuities, PST, etc. This is an **administrative policy** of the CRA and is **not legislated**. The choice of the factor method is an **option** for a Registrant. Some Registrants may prefer to use the **exact calculation** method.

### INPUT TAX CREDITS (ITCs)

In a **Tax Court** of Canada case, the taxpayer filed a **GST Return on August 28, 2007** and claimed **Input Tax Credits** of \$8,129 which were related to expenses that were incurred **prior to January 1, 2003**.



CRA successfully **disallowed the ITCs** on the basis that they were not claimed within the **four-year time limit**.

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### INTERNATIONAL

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### MOVING TO THE UNITED STATES



Canadians that become **non-residents** (including moving to the United States) are **deemed to dispose** of certain assets such as marketable securities, private company

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investments, or real property. (Departure Tax)

This deemed disposition can create **double tax** when an individual **moves to the U.S.** and then disposes of such assets in an actual transaction, because the **cost basis** of the assets under the U.S. rules is based on the original, **historical cost**.

However, an **election** related to the **deemed disposition** reduces the incidence of **double taxation**.

### WITHHOLDING TAX

In a **Technical Interpretation**, CRA notes that the requirement to **withhold or deduct** tax applies to **payments for services** rendered, or to be rendered, in Canada by a **non-resident person**. The Regulation includes payments to a non-resident person of a **fee, commission or other amount** in respect of services

rendered in Canada, of any nature whatever.

### TRANSFER PRICING

CRA is **auditing and assessing** more **cross-border transactions** between **related parties**. Caution is needed in this area.

### U.S. CITIZENS AND RESIDENTS

There is a significant **compliance burden** to **U.S. citizens and residents** if they own **Canadian** (or other non-U.S.) **mutual funds**.



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### DID YOU KNOW

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### CORPORATION FILINGS

**Corporations** with **gross revenues** over **\$1 million** must file their **Federal Income Tax Return electronically** for all taxation years **ending after 2009** - unless they are specifically exempt. However, the **penalty** only applies for taxation years ending **after 2010**.

### NATURAL PERSON - LOSES AGAIN

In a **Federal Court** case the Plaintiff's claim that he was not subject to income tax because he was a "**natural person**" was **dismissed**. The Court noted that this argument has been analyzed and **dismissed** in many other Canadian court cases.

The Plaintiff's efforts to use the Court to advance this **untenable theory** were "**forlorn and doomed**" from the outset.

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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