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TA% Tips & Traps

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...

- Guidance from the Government of Canada on the new CPP regime, with a specific focus on the age to start your CPP retirement pension is now available. The website provides commentary on changes commencing in 2019, estimating future receipts, and determining past contributions. It also contains an explanatory video and links to the Canadian Retirement Income Calculator. For more information, see <https://www.canada.ca/en/employment-social-development/campaigns/cpp-choice.html>.
- Interest rates on Canada Student Loans and Canada Apprentice Loans will be lowered starting in 2019-20. The floating rate will be reduced to prime (from prime plus 2.5%), and the fixed rate will be reduced to prime plus 2% (from prime plus 5%). Also, the Canada Student Financial Assistance Act will be amended so that student loans will not accumulate any interest during the six-month grace period after a student leaves school, during which repayments are not required.
- Resolving objections with CRA can take a long time! For example, formal income tax objections resolved in April that were considered “medium complexity” (which includes many that we deal with) were completed by CRA in an average of 224 days from the date the objection was submitted.

HOME BUYER'S PLAN(HBP): Enhanced Possibilities



The HBP allows first-time home buyers (special rules apply for those with a disability) to withdraw amounts from their RRSP to buy or build a home. Budget 2019 proposed to **increase the HBP withdrawal limit to \$35,000** from \$25,000. As the HBP is available to each individual, a couple could access up to \$70,000 to assist in a first-time home purchase. This increase is effective for withdrawals made after March 19, 2019.

Taxpayers are considered **first-time home buyers** if, in essence, they did **not occupy a home** that they or their **current spouse** or common-law partner **owned** in the **last four years**. Specifically, they could not have occupied the home in the period beginning on January 1 of the fourth year before the year the funds are withdrawn, and ending 31 days before the funds are withdrawn.

Funds must be repaid into the RRSP **over a 15-year period**. If no repayment is made for a year, the individual will have an income inclusion equivalent to the required repayment. However, this could still be advantageous as the tax on the withdrawal is at least deferred to later years.

Budget 2019 also proposed an **expansion to the rules** such that individuals who experience a breakdown of a marriage or common-law relationship may be eligible even if they do not meet the first-time home buyer requirement. This will allow **access to the HBP** for either a **new home** or acquiring the former spouse's interest in the **couple's existing house**. However, where an individual's principal place of residence is a home owned and occupied by a new spouse or common-law partner, the individual will not receive access to the HBP.

ACTION ITEM

Consider whether an RRSP contribution should be made now in order to benefit from the tax deduction, while making equity available for a later home purchase. Funds withdrawn under the plan must be in the RRSP at least 90 days prior to the withdrawal.

FIRST-TIME HOME BUYER INCENTIVE: **New Possibility**

Budget 2019 proposed the new Canada Mortgage and Housing Corporation (CMHC) **first-time home buyer incentive**, which is a **shared equity mortgage** that would give eligible first-time home buyers the ability to lower their borrowing costs by sharing the cost of buying a home with CMHC. **Funding of 5%** of the home purchase price would be available, enhanced to **10%** if the home is **newly constructed**. To be eligible, the following requirements must be met:

- the individual must be a **first-time home buyer** and the **household income must be under \$120,000** per year;
- the insured mortgage combined with the incentive **cannot exceed four times** the annual **household income**; and
- the **minimum down payment** for an insured mortgage must be made.

Regular repayments would not be required. Details of the **ultimate repayment** were **not provided**, although repayment when the home is sold was noted as an example in the Government documents. The Budget papers were also **unclear** on **whether CMHC** would **share in appreciation**, or any decline, in the house value, which is typically a feature of shared equity mortgages.

Many commentators are reporting that this would only assist on the purchase of homes valued at up to \$480,000 (4 x \$120,000). However, based on the details released thus far, it appears that it is not the house price, but rather the total mortgage that is limited to \$480,000. For example, where a \$25,000 down payment is paid (assuming 5% down), a house valued at approximately \$500,000 could be purchased (assuming family income was just under \$120,000, and the mortgage totalled \$475,000).

It is uncertain whether there will be a cap on the maximum deposit or house value. More details will be released later this year, with the program **expected to be operational by September 2019.**



The Budget also announced financing to work with the broader financial community to assist third party providers of shared equity mortgages in scaling up their business and to encourage **new players to enter this market.**

ACTION ITEM

Watch out for details of this new incentive to be released in the fall.

SAUNA & HYDROTHERAPY POOL: Medical Expense Tax Credit



ACTION ITEM

There are several renovations that can be eligible for one or both of these credits. Receipts, invoices and/or other supporting documents should clearly identify the health benefits and purpose.

In a December 4, 2018 **Technical Interpretation**, CRA was asked whether the costs of installing a **steam shower (sauna)** and **hydrotherapy pool** could be eligible for the **medical expense tax credit (METC)**. The use of these devices was recommended as treatment to maintain strength and mobility.

CRA noted that, for renovations to be eligible, they must:

- a) **enable** the patient to **gain access** to the dwelling **or** be **mobile** and functional within it;
- b) **not** typically be expected to **increase the value** of the dwelling; and
- c) **not** normally be **undertaken by individuals with normal physical development** or who do not have a severe and prolonged mobility impairment.

While the expenses contemplated may meet criteria (a), CRA opined they would likely **fail criteria (b) and (c)** and, therefore, **not be eligible for the METC**. However, eligibility remains a question of fact, with the onus on the taxpayer to demonstrate that all requirements were met.

Also, CRA noted that a **renovation cost** incurred for the main purpose of enabling a qualifying individual to gain access to the dwelling or be mobile and functional within it (the same as criteria (a) for the METC) **could** be eligible for the **home accessibility tax credit (HATC)**. The HATC is a non-refundable credit that provides tax relief **on up to \$10,000** annually of **renovations** to a home to enhance mobility or **reduce risk of harm** for a qualifying individual (those 65 years of age or older at the end of the taxation year or eligible for the disability tax credit). The HATC requirements do not exclude costs failing criteria (b) or (c) above.

VIDEO LEGACY: What Message Am I Leaving?



When conducting our **estate plans**, we are often focused on the distribution of assets (such as homes, bank accounts, investments, and interest in private corporations), providing for dependents, and ensuring overall family harmony. However, **softer issues** may be overlooked. For example, some suggest that it may be **useful to leave** a **video legacy** for surviving family members to view after a loved one passes.

One app, **RecordMeNow**, allows users to make a video legacy through **targeted question-prompting** and **video recording**. Users can create a video library organized into **different subject areas** for the surviving loved ones. As an individual's death can rarely be predicted with certainty, the founder advises recording a legacy due to the risk of an untimely death.

The service was originally developed such that **children who lost parents** at a young age would have something to connect with their deceased parent(s); however, it can be used by individuals of all ages.

For further information see the BBC article (If you die early, how will your children remember you?, Shaw, Douglas), or go to www.recordmenow.org.

ACTION ITEM

What would happen if you were to pass away unexpectedly? Is everything in place such that in the days and years following, the desired results would be achieved? Consider revisiting your estate plan, will, and any other communications you would like to leave for your family.

OLD AGE SECURITY (OAS) DEFERRAL: **Opting Out Retroactively**

As of July 1, 2013, where receipt of OAS is delayed, the monthly pension is **increased by a factor of 0.6%** for **each month deferred**, to a maximum of 36% (60 months, commencing receipt at age 70). This option may be especially desirable for those whose OAS would be entirely clawed back due to high income. For 2019, every \$1 of income in excess of \$77,580 results in a \$0.15 clawback. While it is best to do the analysis and make the decision appropriately from the outset, the following considers what happened when those opportunities were missed.

In a January 31, 2019 **Federal Court** case, at issue was whether an **individual could apply** for his **OAS pension** to be **cancelled** slightly more than one year after it had begun in order to benefit from the **voluntary deferral option**.

The individual applied for OAS on March 1, 2013. His first payment was received in February 2014, the month after he turned 65.

In April of 2015 he realized that his **entire OAS pension** for the previous year was **lost** due to high earnings, and also that recent changes allowed deferral of receipt in exchange for higher payments. As such, a request to cancel it was submitted.

An individual has the ability to **cancel** a pension **within six months** of the commencement (i.e. the first payment). There is **no** specific provision that allows for an **extension** to this time limit.

The taxpayer cited various **reasons** why the **application was not made in time**, primarily in connection with his argument that the Government did not provide timely notification of this new possibility. In particular, he noted that he did not receive the letter sent out to those eligible to begin receipt in 2013 which explained the changes. Also, **no notification** of the new option was included in the application form nor in the letter he received advising him that his application was accepted.



Taxpayer loses

Since there was **no provision allowing for an extension of time**, the Court was not able to assist the taxpayer. The Court did, however, question whether the matter should have been dealt with under other provisions which allow the Government to take **remedial action** for **denied benefits** resulting from **erroneous advice or administrative error**.

ACTION ITEM

Determine whether it is best to defer receiving OAS prior to applying. If an error has been made, consider whether it was due to error in government advice or administration.

GST/HST NEW HOUSING REBATE: Meeting the Conditions



In a December 18, 2018 **Tax Court of Canada** case, the Court considered whether the **new housing rebate** was available where the taxpayer sold a newly developed property **shortly after taking possession**. The taxpayer entered into an agreement to purchase the land in 2012, took possession of it two years later when the building was completed, and then sold it three months later.

To qualify for the rebate, the purchaser, or a person related to the purchaser, must, at the time they become liable for the purchase, **intend to use the property as their primary place of residence**. Also, the taxpayer or a related person must **either** be the first individual to occupy it, or **sell the property** as an exempt supply **before** it was **occupied by any person** (normally meaning that it is simply sold before anyone moves in).

CONDITION 1: Initial Intention

The Court noted the following as a **non-exhaustive list of factors** to evaluate when considering original intention:

- demarcation of primary place of residence by change of address;
- the relocation of sufficient personal effects to the rebate property;

- if the buyer never moved in, was there cogent evidence that the original plan to live in the property was frustrated?;
- permanent occupant insurance versus seasonal or rental coverage;
- disposition of previous primary residence; and
- if dual occupancy continues, then the rebate property must be more frequently occupied, more convenient to third party locations such as work, have more convenient amenities, and be more suitable to the needs of the taxpayer.

The taxpayer argued that there was a **frustration of original intent** as listed in c) above. In particular, the taxpayer noted that the purchase occurred as a **result of a divorce**. The ex-spouse did not want his children to live in the same house as the taxpayer's new partner. Therefore, a new residence was required. However, this requirement was later waived, which frustrated the taxpayer's original intent.

The Court found conflicting testimony and insufficient proof of this **separation requirement** (and subsequent **removal of the condition**) and, therefore, was not able to find that the original intent was to live in the location.

CONDITION 2:

Occupy or Eligible Sale (exempt supply)

Although it was argued that the taxpayer originally **occupied** the home, there were **no receipts** for **moving** expenses, the property **sale listing** described it as “**unoccupied and never used**”, and it was listed for **short-term rental** on **Airbnb** two months after possession. Further, the Court noted that the taxpayer was living at the new spouse's residence at the time of acquisition and that there was insufficient evidence that a move had been made. As such, the Court determined that it was **not first occupied by the taxpayer**.

The Court also found that the property was **not sold as an exempt supply** before it was occupied by any person but did not give any specific reasons. While the Court did not specifically list it as a reason for not meeting the exempt sale possibility in condition 2, it did mention that there was at least one rental of the property on Airbnb prior to sale. It is uncertain whether this offended the exempt supply possibility.

ACTION ITEM

In order to make the claim, ensure that both conditions are, or will be, met. If one will not be met, consider whether the GST/HST new residential rental rebate will be available instead.



SHARED CUSTODY OF A CHILD: The “Equal or Near Equal” Issue

Certain **tax benefits**, such as the Canada child benefit, the GST/HST rebate, and the recently implemented federal carbon tax incentive (where applicable) are normally **paid** entirely to the parent with whom the child primarily resides. Where the child resides with the parents on an **equal or near equal basis**, each parent is entitled to **half of the credits/benefits** which would be available if the child resided primarily with them.

A March 27, 2019 **Federal Court of Appeal** case addressed the proportion of time each parent is required to reside with the child in order to meet the “**equal or near equal**” condition. The Court noted that various lower court decisions consistently used “**time**” as a basis for determination. It also noted that, while the proportion of time residing with the child considered to be “equal or near equal” varied, it was never accepted below 40%.

While it noted that **40%** is the **legislated threshold** for determining shared-custody status for **Federal Child Support Guidelines** (FCSG), the Court found that a determination of “equal or near equal” status for purposes of these benefits should be made without reference to the FCSG. The Court determined that the income tax definition required that the **percentage of time** with the child must be able to be **rounded off to** no less than **50%**. Percentages should be rounded to the **nearest whole number** that is a **multiple of 10**. In other words, 44% would be rounded to 40% while 48% would be rounded to 50%. As a result, a **minimum of 45%** would be required to meet the income tax definition.

This is the highest Court to make a determination on this issue thus far, which means it is a binding precedent. While **previous** decisions commonly accepted a threshold of approximately **40%**, this case **clearly states** that the minimum is **45%**. As such, there is a **5% spread** between the shared-custody definition for tax



law (residing with the child on a near-equal basis) and the definition of a shared custody arrangement under the FCSG (which explicitly requires physical custody of the child at least 40% of the time). This means that, for example, a child who spends 42% of their time with one parent, and 58% with the other, would be shared custody for FCSG purposes, but the parent with whom the child spends 58% of their time could be entitled to 100% of benefits determined under the Income Tax Act.

ACTION ITEM

Be aware that eligibility for the Canada child benefit may change where the child is residing with one parent between 40% and 45% of the time. This change should also be considered in future separation agreements.

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.

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