PERSONAL Newsletter

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Recent CRA Thinking on Topics of Interest

The Canada Revenue Agency (CRA) regularly releases its responses to queries from the general public on varying tax matters. The responses given by the CRA to these queries give us an insight to the CRA's approach to the law, including actual practices and policies of the government on such issues. Some recent queries and responses of interest are summarized below.

Employee Benefits—Fitness Club Fees

The question posed to the CRA was whether fitness memberships, made available to employees by an employer who had contracted such services with a fitness facility, were considered taxable employee benefits. In this instance, the employee would pay the employer for the service by payroll deduction. The employer was able to negotiate special rates for this service for all its employees, such services being available to them at the various locations of the fitness club. The employer has control over issuing membership cards, cancellations, and renewals. The fitness club is independent and simply provides the service.

In the CRA's view, the provision of such a service as described above is not considered a taxable employee benefit. The CRA specifies that membership fees will not be taxable if:

- the employer pays an organization separately to provide the fitness facility;
- the contract is between the employer and the fitness provider; and
- the fitness membership is made available to all employees.

In this instance, the CRA concluded that there was no taxable benefit in making the fitness club membership available to employees.

Employee Benefits—Employee Awards

The CRA is frequently asked about the taxability of awards given to employees under various different circumstances. In this instance the CRA was asked to comment on whether the giving of certificates to employees who meet certain performance targets was to be treated as income for those employees.

The CRA has an administrative policy that non-cash gifts given to an arm's length employee in certain circumstances are not taxable to the employee provided that they do not exceed a value greater than $500 annually. The circumstances under which they would be considered taxable would be in situations where such non-cash awards were presented to employees to reward them for meeting certain performance objectives for employment-related activities. In this instance the employees were given certificates that they could redeem for goods and merchandise offered by the employer. The CRA, therefore, ruled that the awards would be taxable as income to the employee involved.

The CRA cited some of their administrative policies respecting the taxability of awards. These are as follows.

An arms-length employee can receive any number of non-cash gifts and awards from the employer as non-taxable, provided that they do not exceed $500 in total annually and they are not awarded as performance-related awards. If they are deemed to be performance-related awards (e.g., an award given for meeting a sales target), then they are taxable in their entirety and no exemption applies.

In addition to the $500 annual limit on general non-cash gifts and awards, an employee can also receive, free of tax, a non-cash long service or anniversary award of up to $500, provided that the award cannot be for less than five years or that the last award was presented at least 5 years ago. These awards are separate and one cannot be used to enhance the limit for the other.

Awards granted to employees who are non-arm's length employees (i.e., related to the company), will have all awards treated as taxable regardless of their nature.

Gifts of items of an immaterial nature, such as t-shirts, caps, mugs, trophies, etc., will not be considered a taxable benefit to employees.

The giving of gift cards or stock certificates, although being non-cash, will be considered to be a gift of near cash and will be considered taxable regardless of how they are given.

Principal Residence—Exemption of Residence Held in Trust

The CRA was asked if the principal residence exemption would apply in various situations where a principal residence was held in an *inter vivos* trust.

The first situation describes a residence held in trust for a beneficiary over the age of 18 who holds or owns no other residence and resided in that residence full time.

The CRA was also asked if the principal residence exemption would apply if there were other beneficiaries of that trust who were not over the age of 18.

The CRA was also asked if there would be a change to the principal residence exemption is a situation where the parents of the children were also beneficiaries of the trust.

A further question asks if the principal residence exemption would still apply in situations where the over age 18 beneficiary, who inhabits the house, were to become married or live common law with a spouse.

The CRA responded as follows:

- In situations as described in the first instance, the principal residence exemption would apply for all the time that the house was held in the trust and used as a principal residence by the over age 18 beneficiary.
- In the second instance, the CRA stated that the fact that there were other beneficiaries of the trust who were under the age of 18 would not alter the exemption of the residence as a principal residence.
- In the third instance, the CRA stated that the mere fact that the parents were also beneficiaries of the trust would not alter the exemption.
- In the fourth instance, the CRA stated that if a spouse or common law partner was introduced into the mix, the principal residence exemption again would be available provided the spouse or common law partner was not also claiming another property as his or her principal residence.

Spousal Support

Two similar questions were posed of the CRA where Canadian resident taxpayers were in receipt of support payments being made by former spouses who were not resident in Canada and were resident in a country where they could not avail themselves of a tax deduction for the support that they paid. The question was: does the receiving spouse in Canada have to report the support payment as income and pay tax even though the ex-spouse cannot avail themselves of an offsetting deduction in their country of residence?

One situation involved a resident of Japan making support payments to his ex who is a Canadian resident. As a resident of Japan, he is not allowed a credit or deduction of any kind for payments made to his ex. The CRA stated that the taxability of the support payments received by the Canadian taxpayer is not affected in anyway by the deductibility or lack thereof of the support payments by the payor. If the payor had been a resident of Canada, he may have been allowed a deduction for the support so paid provided certain conditions were met, but the taxability of the support as income by the Canadian recipient is not affected. As a result the support received by the recipient must be included in his or her income.

The second situation was similar in that the Canadian resident received support payments from an ex who lived in Israel. As with the above case the paying ex could not deduct the support from his or her income under Israeli tax law. As was expected, the CRA ruling was consistent with that given above, the recipient must include the payments in income regardless of the deductibility of the payments to the payor.

Deductibility of Professional Fees—Voluntary Disclosure

The question was asked if professional fees incurred for the purpose of making a voluntary disclosure to the CRA would be allowed as a deductible expense for tax purposes. Generally, fees incurred in preparing, instituting, and prosecuting an objection to an assessment is allowed as an expense provided the expenses are reasonable. However, the CRA ruled that expenses incurred in making a voluntary disclosure are not deductible as they do not relate to the filing of an objection or appeal as is specifically allowed under the *Income Tax Act* (the "Act"). They also would not qualify as an expense incurred to earn income.

Deductibility of Legal Fees—Defects in Principal Residence

In this situation, the taxpayer incurred legal fees relating to the repair of structural defects in his house. The house was partially used as a home office and the question put to the CRA was: can the taxpayer deduct a portion of the legal fees as a business expense? It was the CRA's opinion that the legal fees paid were not related to the business conducted from the home, but rather incurred to fix a structural defect in the house. The expenses would still have been incurred even if no business was conducted from the house. Since there was no correlation between the two, it was ruled that the legal fees were not deductible as a business expense.

Volunteer Firefighter Tax Credit

Taxpayers who are voluntary firefighters are granted a non-refundable tax credit under the Act of 15% of an amount of $ 3,000, provided that certain conditions are met. These conditions are:

- the volunteer must perform at least 200 hours of eligible firefighting services during the year;
- services performed must relate to fighting fires and responding to other emergency calls as well as training and attending meetings;
- only voluntary services qualify towards the 200 hours; and
- the volunteer must be able to provide a letter from the fire department attesting to the services performed.

The question asked of the CRA was, would a volunteer firefighter be eligible for this credit if he was a Canadian taxpayer, but performed the volunteer services in the United States. Since nowhere in the legislation does it state that the services must be performed in Canada, the ruling was that the credit would be allowed as long as all the other conditions were met.