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 various tax matters. These responses give us insight into the CRA's approach to the law, including the actual practices and policies of the government on the issues. Some recent queries and responses of interest to Canadian taxpayers are summarized below.

Maintenance of a Self-Contained Establishment

The CRA was asked to comment on the meaning of the expression "maintains a self-contained domestic establishment" (SCDE) as used in s. 118(1)(b) of the *Income Tax Act* (the "Act") to determine if a taxpayer could claim an eligible dependant tax credit. Since the expression is not defined in the Act, you must refer to its ordinary meaning for its interpretation. The CRA had noted previously that someone not owning or renting an SCDE was not considered to maintain an SCDE if he or she contributed only irregularly and randomly to the expenses incurred for the SCDE. The CRA was asked if that position was still valid.

The CRA reconfirmed its position that an individual is deemed to maintain an SCDE when he or she owns or rents the SCDE that is used as his or her principal residence and that he or she is responsible to maintain alone or with others. This is also the case if he or she does not own or rent the SCDE but regularly pays expenses related to it and the SCDE is under his or her responsibility. This would not be the case if the payments were only made randomly and irregularly in respect of the SCDE.

Moving Allowance–Purchase of Furniture

The CRA was asked to consider the following issue:

- The individual, X, is employed by the company, ACO, located outside Canada.
- X accepts a position with the company, BCO, associated with ACO and located in Canada.
- Instead of paying for the costs associated with moving A's personal effects (e.g., furniture, bedding, etc.) to Canada, BCO would pay him a moving or reinstallation allowance that he could use to buy new furniture, bedding, etc.
- The costs that BCO would incur to move A's personal effects to Canada would exceed the amount of the allowance paid to him.
- The allowance would be fixed and only be payable upon presentation of vouchers.

The CRA was asked if the allowance would be taxable to the employee.

The CRA confirmed that it did not have enough information to determine if the allowance paid to the relocated employee was a bona fide allowance or an expense reimbursement. Although the term "allowance" is not defined in the Act, it is usually considered to be an amount determined in advance, received by the employee from the employer in addition to his salary, and for which no vouchers are required.

Allowance

If the allowance is a true allowance, it must be included in the employee's income under s. 6(1)(*b*) of the Act since none of the exceptions described in s. 6(1)(*b*)(i) to (ix) are applicable in this case. Note that allowances for incidental moving and relocation expenses of relocation are subject to an administration policy described in CRA Guide T4130.

Expense Reimbursement

If the expense is not a true allowance but a reimbursement of expenses incurred by the employee to purchase furniture and other personal effects following the employee's relocation, the reimbursement is still taxable to the employee as an employment benefit under s. 6(1)(*a*) of the Act. The benefit would normally be included in the employee's income if it:

- provides him with an economic advantage,
- can be measured and quantified, and
- benefits the employee more than the employer.

If those three conditions are met, the reimbursement would benefit more the employee than the employer and would have to be included in the employee's income under s. 6(1)(*a*) of the Act.

Deferred Salary Leave Plan and Maternity Leave

Employment income is normally taxed as received. Where an employee participates in a "salary deferral arrangement" (SDA), the receipt of income that is earned currently is deferred but the deferred amount, and any income accruing on it, is included in the employee's income when it is earned and not as received.

An exception to these rules is provided for an SDA that meets the conditions outlined in Regulation 6801(*a*) of the Income Tax Regulations (i.e., a "leave of absence plan"). One of the conditions imposed under that regulation is that the employee returns to work after the leave of absence for a period not less than the leave period.

The CRA was asked how these rules apply to an employee who was receiving benefits under an SDA that qualified as a leave of absence plan if, during her leave period, she decided not to return to work, but to take additional leave as a maternity leave.

It was the CRA's view that once the employee made the decision not to return to work, the SDA ceased to qualify as a leave of absence plan and any amounts deferred under the plan, including income earned on the deferred amounts, was to be included in the employee's income at that time. The SDA should pay to her the remaining deferred amounts, net of withholdings.

The interpretation noted that no penalty is exigible in these circumstances. If, however, the employee was aware at an earlier time that she did not intend to return to work but had not informed the SDA's administrator, it was the CRA's view that she could be subject to a penalty for making a false statement under circumstances amounting to gross negligence.

As a final point, the CRA payments from the SDA during the leave period would not attract Employment Insurance premiums, as the premiums were due when the deferred amounts arose and not when they were paid.

Estate Trustee Fees

A lawyer was asked to serve as the executor of a friend's estate. He asked the CRA whether the trustee fees he received were to be treated as income from an office or employment or as business income. He also asked for guidance on his and the estate's obligations under the Income Tax Act (the "Act"), and if a trustee is liable if the assets of the estate are insufficient to discharge those obligations.

The CRA replied that where a lawyer does not normally engage in estate administration, but serves as an executor at the request of a friend, it is likely that any trustee fees earned are income from an office and not business income. Ultimately, the determination is a question of fact.

If the trustee fees are income from an office, the estate must withhold and remit income tax and Canada Pension Plan contributions and report annually by filing a T4. If the trustee fees were income from a business, the estate should prepare a T4A annually.

Finally, the CRA noted that the estate and the executor are jointly liable for the obligation of the estate under the Act. This obligation is limited to the value of the property of the estate distributed to its beneficiaries, if the distribution occurs without a clearance certificate.

Transfer from RRSP of Deceased Taxpayer

Section 146(16)(*b*) of the Act permits a transfer of funds from the registered retirement savings plan (RRSP) of an annuitant to the plan of a former spouse where the transfer is made on the breakdown of the marriage.

A taxpayer had completed Form T2220 authorizing such a transfer and had submitted it to his or her financial institution, but passed away before the funds were actually transferred.

In an external technical interpretation, the CRA was of the view that the provision encompasses only a transfer from the RRSP of a living person to that of another living person. Thus, s. 146(16) of the Act would not apply where the annuitant under the transferor plan died before the transfer was effected.