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Deductibility of Child Care Expenses

The Act provides for the deduction of “child care expenses” incurred for services rendered in the year in respect of an “eligible child” of the taxpayer. The maximum yearly deduction is the lesser of:

1. the amount actually paid for child care;
2. \$8,000 for each eligible child who is less than seven years of age, \$5,000 for each eligible child who is older than 7 but under the age of 16 at any time during the year, and \$11,000 for each eligible child for whom an impairment tax credit may be claimed;
3. 2/3 of the taxpayer’s earned income.

To qualify, child care expenses must be incurred in order to permit the taxpayer or a supporting person of the child to pursue employment, business, training, or research activities. Child care expenses are only deductible as provided by the *Income Tax Act* (the “Act”).

Where there is more than one “supporting person” of a child, generally the deduction of child care expenses must be taken by the supporting person who has the lowest income, regardless of who actually incurred the expenses. In the most straightforward situation involving a wife and husband where child care expenses are incurred to permit both spouses to work, the child care expenses will be deductible by

the spouse with the lower income. A taxpayer with no income is deemed to have income of zero. This deeming provision was enacted after court decisions held that where one spouse had no income at all, the spouse with income could deduct the child care expenses since there was only one income. In certain specific circumstances set out in paragraph 3 (below), the higher income person is allowed to claim the child care expenses. If both the taxpayer and the supporting person are students, the higher income taxpayer may claim child care expenses as calculated under paragraph 3. The calculation is based on the number of weeks in the year that the taxpayer is a student. If there is a supporting person, the amount is based on the number of weeks both individuals are students.

1. Meaning of “eligible child”

An “eligible child” of a taxpayer means a child of the taxpayer or of the taxpayer’s spouse or common law partner or a child who is dependent on the taxpayer or the taxpayer’s spouse or common law partner and whose income for the year does not exceed the basic personal amount (\$11,635). The child must be under 16 years old at some time during the year (i.e., be under 17 at the end of the year) or be dependent on the taxpayer or the taxpayer’s spouse or common law partner because of a mental or physical infirmity. Note that being dependent by reason of infirmity is different

from the child qualifying for the impairment tax credit. A child is generally considered to be dependent if the taxpayer has contributed to the maintenance of the child.

The definition “eligible child” and the definition “supporting person” refer not only to a “spouse” (including an unmarried opposite-sex spouse who has been cohabiting with the taxpayer in a conjugal relationship for at least one year or is the parent of a child of whom the taxpayer is also a parent), they also refer to an unmarried same-sex partner who meets these requirements. Therefore, an eligible child includes the child of a same-sex or opposite-sex common law partner who has been cohabiting with the taxpayer for at least one year or is the parent of a child of whom the taxpayer is also a parent. For these purposes, a common law partnership will be considered to have broken down if the two people have not cohabited for at least 90 days. A child of a taxpayer includes a natural or adopted child of the taxpayer, a child of the taxpayer’s spouse or common law partner, the spouse or common law partner of the taxpayer’s child, and a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has or immediately before the person attained the age of 19 had, in law or in fact, custody and control. It should be noted that a taxpayer need not live with the child for the child to be an eligible child of the taxpayer. However, if the taxpayer does not reside with the child, the costs of the child services will likely cease to qualify as child care expenses.

2. Child care expenses

To qualify as a child care expense, the expense must be for providing child care services in Canada for an eligible child of the taxpayer. Babysitting, day nursery, and attendance at a boarding school or camp are specifically mentioned but other services could fall within the general meaning of child care services. However, it is specifically provided that child care expenses do not include medical and hospital care expenses, clothing, transportation costs, education costs, or board or lodging that is not specifically mentioned. Board and lodging expenses are limited to lodging at a boarding school or camp to a maximum of:

1. \$275 per week for a child qualifying for the disability amount;
2. \$200 per week for a child under 7 at year-end and not qualifying for the disability amount; and

3. \$125 per week for a child over 6 but under 17 at year-end or over 18 and disabled at year-end but not qualifying for the disability amount.

In general, child care expenses of a taxpayer include those incurred personally as well as those incurred by a supporting person of the child for the year. However, if the supporting person of the child was, because of a marriage breakdown of the person’s marriage or common law partnership, living separate and apart from the taxpayer for a period of at least 90 days beginning in the year and was living separate and apart at the end of the year, then only the child care expenses paid by the taxpayer are taken into account when calculating the taxpayer’s child care expenses deduction.

Receipts for child care expenses need not be filed with the taxpayer’s income tax return but the taxpayer should have receipts and keep them on file in the event that the CRA asks for them. Where the child care services are provided by an individual, the taxpayer must include the individual’s Social Insurance Number on Form T778 when the claim is made. This requirement is directed toward assuring that the child care expenses will be reported as income of the individual who performs the services. The absence of receipts is not fatal to a claim for child care expenses.

The child care services must be obtained to enable the taxpayer or a supporting person of the child who resided with the child to earn employment or business income or to carry on research or similar work in respect of which a grant is received. The expenses qualify if the child care services allow the taxpayer to attend a designated educational institution or a secondary school for a period of not less than three consecutive weeks in a program requiring a time commitment of at least 10 hours per week on courses or work. Child care expenses may be claimed by part-time students who attend a designated educational institution or a secondary school for a period of not less than three consecutive weeks in a program requiring a time commitment of at least 12 hours per month. Expenses related to the services of a nanny familiarizing herself with her duties while the taxpayer was on maternity leave were held to be within the “object and spirit” of the provisions but were limited to those attributable to the seven days prior to the taxpayer’s return to employment.

Finally, the child care services must be provided by a person resident in Canada. However, expenses will

not qualify if the services are provided by the child's father or mother, any supporting person of the child, any person under 18 years of age who is connected—by blood relationship, marriage or common law partnership, or adoption—with the taxpayer or the taxpayer's spouse or common law partner, or if they are provided by any person in respect of whom the taxpayer or any supporting person of the child has claimed a dependent tax credit.

3. Who may claim deduction

If there is more than one "supporting person" of an eligible child, the deduction must, except in limited circumstances, be taken by the supporting person with the lowest income. A supporting person means a person who resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year if that person is a parent of the child, the taxpayer's spouse or common law partner, or if the person claimed a tax credit in respect of the child.

The supporting person with the lowest income will not have to deduct child care expenses if such supporting person is:

1. in full-time attendance at school (i.e., enrolment in a secondary school or designated program of at least three consecutive weeks' duration, requiring at least 10 hours per week, on courses or work in the program);
2. certified in writing by a doctor to be incapable of caring for children by reason of medical or physical infirmity;
3. in prison for at least two weeks in the year; or
4. living apart from the supporting person with the higher income at the end of the year and for a period of at least 90 days beginning in the year because of the breakdown of their marriage or common law partnership.

In determining which supporting person has the lower income, the deduction for child care expenses is not taken into consideration, nor are deductions

for the repayment of employment insurance benefits, family allowance, and/or old age security benefits. If two supporting persons have identical earned income, they must jointly elect to treat one income as being higher.

Single parents may claim a deduction for child care expenses incurred in order to attend school full-time against all types of income to a maximum of the total of:

1. \$275 per week for a child qualifying for the disability amount;
2. \$200 per week for a child under 7 at year-end and not qualifying for the disability amount; and
3. \$125 per week for a child over 6 but under 17 at year-end or over 18 and disabled at year-end but not qualifying for the disability amount, multiplied by the number of weeks during which the supporting parent is in full-time attendance at school. This also applies if the taxpayer is a qualifying student and is the supporting person with the higher income of the year.

A part-time student attending a course lasting at least three consecutive weeks and involving a minimum of 12 hours of courses per month can claim child care expenses for the total of:

1. \$275 per week for a child qualifying for the disability amount;
2. \$200 per week for a child under 7 at year-end and not qualifying for the disability amount; and
3. \$125 per week for a child over 6 but under 17 at year-end or over 18 and disabled at year-end but not qualifying for the disability amount, multiplied by the number of months the parent is enrolled in the educational program. If there is a supporting person with a higher income, the supporting person may claim this amount as a child care expense.