

Q3 2021 Issue 57

**IN THIS ISSUE****Purpose Criteria****Prohibited Expenses****How Much Can I Deduct?***Parents Living Together**Parents Who are Separated or Divorced**Parent Enrolled in Education***You Must Keep Receipts**

## The Child Care Expense Deduction

One of the primary issues of this year's federal election is the cost of child care. For example, the Liberal party promises to subsidize child care costs such that it could cost parents \$10 per day. With lower out-of-pocket costs for parents, the existing federal child care expense deduction would presumably become less valuable to taxpayers. On the other hand, the Conservative party promises to make the child care expense deduction a refundable tax credit so that it becomes more accessible to lower-income families. Accordingly, the deduction would become more valuable to at least some taxpayers—it really depends on how a Conservative government would change the rules.

In either case, change seems inevitable, so we thought it would be worth reviewing the current rules for deducting child care expenses for tax purposes.

### Is My Child Eligible?

An eligible child of a taxpayer includes:

1. a child of the taxpayer or the taxpayer's spouse or common-law partner, and
2. any child who was dependent on the taxpayer or the taxpayer's spouse or common-law partner at some time during the year, and whose income for the year did not exceed \$13,808 (in 2021).

Moreover, the child must be under 16 years old at any time in the year, or if they are over 16, they must have been dependent on the taxpayer or the taxpayer's spouse or common-law partner and had a physical or mental infirmity. Even if their birthday is January 1, a child will be under 16 at some time in the year.

It is not required that an eligible child be in the custody of the person claiming the child care deduction. Child care expenses qualify for a deduction by a taxpayer in any case where the expenses relate to an eligible child.

### What Expenses Can I Deduct?

The CRA's policy is that child care expenses include payments to

- an eligible person providing child care services;
- a day nursery school or day-care centre;
- a day camp or sports school;
- a boarding school or camp (including a sports school where lodging is involved); and
- an educational institution for the purpose of providing child care services.

Where an educational institution offers both child care and an educational program, only the portion of the fees relating to child care qualify. This would include such things as supervision before and after class or

during lunch. However, when the payment is made for a child under compulsory school age, it is generally considered to be for child care rather than education unless the facts indicate otherwise.

Board and lodging expenses are only eligible to the extent they are included in total charges for attendance at an overnight sports school or a boarding school or camp, and are subject to the following limits:

1. \$200 per week per eligible child under 7 at the end of the year (other than a child described under (3)); plus
2. \$125 per week per eligible child for children over six but not yet 17 at the end of the year (other than a child described under (3)); plus
3. \$275 per week per eligible child not yet 17 at the end of the year with respect to whom someone claims the disability credit.

The cost of meals included in the cost of babysitting, day nursery, or day camp is permitted.

Expenses for advertising and placement agency fees incurred to locate a child care provider should also qualify as child care expenses.

### Purpose Criteria

To be deductible, the expenses must have been incurred to either the taxpayer, or the supporting person with respect to the child for the year, who resided with the child at the time the expense was incurred, to be employed, to carry on a business, to carry on research or similar work for which a grant was received, or to attend a secondary school or designated educational institution. The educational attendance criterion will be met where a person attends a secondary or designated school and is enrolled in a program not less than three consecutive weeks long which requires of all students not less than (i) 10 hours per week of course or program work, or (ii) 12 hours per month on courses in the program.

### Prohibited Expenses

Payments for board and lodging (except as mentioned above), clothing, transportation, education, medical or hospital care are not eligible child care deductions. Moreover, child care payments may be made to any person resident in Canada except

1. the father or mother of the child;
2. a person who was under 18 and related to

the taxpayer or their spouse or common-law partner; and

3. a person in respect of whom any dependant deduction was claimed by the person deducting the child care expenses or a supporting person.

### How Much Can I Deduct?

A person may deduct the total amount spent on child care, if it does not exceed the lesser of (a) and (b) below:

- a. the sum of:
  - (i) \$11,000 per eligible child for whom a disability tax credit was claimed and a Form T2201 was completed, plus
  - (ii) \$8,000 per eligible child under 7 at year-end and for whom no disability tax credit was claimed, plus
  - (iii) \$5,000 per eligible child not covered above;
- b. two-thirds of the person's "earned income" for the year.

However, if the person is not a single parent, there are additional rules and exceptions to be aware of.

#### *Parents Living Together*

Where the child lives with both parents, the child care expense deduction is available to the parent with the lower income. However, where the higher-income parent is enrolled in certain courses this rule may not apply—see below. The lower income spouse may deduct the amount the couple spent on child care, subject to the dollar and earned income limits described above.

However, the supporting individual with the higher income may claim a deduction based on the number of weeks in the year throughout which the lower-income individual is separated, infirm, confined to a bed or a wheelchair, in prison or in attendance at a secondary school or designated educational institution. Where the lower-income spouse is in part-time attendance at school, the deduction is based on the number of months rather than weeks.

For each week throughout which the higher-income individual was eligible to claim, the deduction limits under the higher income rule are restricted to

- i. \$200 per week per eligible child under seven at the end of the year, other than a child claimed in (iii), plus
- ii. \$125 per week per eligible child for children over 6 but not yet 17 at the end of the year, or any child, regardless of age, who is dependent due to mental or physical infirmity, other than a child claimed in (iii), plus
- iii. \$275 per week per eligible child for whom anyone is entitled to claim disability credit.

The lower-income individual's claim is accordingly reduced by the amount of this claim.

The higher income spouse or common-law partner may claim, in addition to any weekly amounts they may claim under the rules above

- child care expenses for eligible children of \$200 per child under seven at the end of the year (and not disabled), plus
- \$125 per child over six but under 17 (not disabled), plus
- \$275 for disabled children not yet 17 for each month the other spouse/partner is a student in attendance at a designated educational institution (as described above) or secondary school and enrolled in a program of not less than three consecutive weeks duration and that requires not less than 12 hours in the month on courses in the program (this monthly amount is not available for any month that includes any days included in a weekly calculation by the higher income spouse as described above).

#### *Parents Who are Separated or Divorced*

Complexities arise where the parents of an eligible child are separated or divorced. A taxpayer may claim any child care deduction only for an eligible child of their spouse or for whom they can claim a personal exemption (e.g., a grandchild, nephew, or niece). In complex situations, one must also look to the definition of supporting person to see who is entitled to what deduction.

A "supporting person" of an eligible child of a taxpayer for a taxation year means a person (other than the taxpayer) who is

1. a parent of the child;
2. the taxpayer's spouse or common-law partner; or
3. any other individual who claimed the child as a dependant for the year;

if the parent, spouse, or other individual, as the case may be, resided with the taxpayer at any time during the year and at any time within 60 days after the end of the year.

The taxpayer with the higher income can claim child care expenses during the period that the supporting person with the lower income is living separate and apart from the taxpayer with the higher income by reason of breakdown of the marriage (or similar domestic relationship) if

1. the breakdown is for a period of at least 90 days commencing in the year;
2. the parties were living separate and apart at the end of the year; and
3. the taxpayer with the higher income for the year has paid those child care expenses.

Where there is separation (and no other marital or common-law relationship) throughout the year, there is no "supporting person" by definition and the payer of child care expenses may claim them for an "eligible child" if the general requirements are met. The limitations will be the \$8,000/\$5,000/\$11,000/two-thirds of income limitations. Where there is no supporting person, the definition of "child care expense", which requires that it must be an expense incurred to enable the taxpayer or the supporting person to carry out activities that meet the previously discussed purpose criteria. It follows that where there is no supporting person, the taxpayer may deduct only those expenses that relate to a period where the taxpayer and the child reside together.

#### *Parent Enrolled in Education*

A person can deduct child care expenses in respect of periods during which they are a qualifying student and are either:

- the sole supporting person of an eligible child; or
- if there is another supporting person, they are the supporting person with the higher income for the year.

## You Must Keep Receipts

To be allowed deductions for child care expenses, these expenses must be supported with receipts. Each receipt must include the following information:

1. the name, address and Social Insurance Number of the person to whom the taxpayer made payments for child care—the Social Insurance Number is not necessary for organizations such as a day nursery, or where payments are paid to non-residents;
2. the name of the parent;
3. the amount paid for child care;
4. the date of the payment;
5. the signature of the person who provided the child care services.

The receipts do not have to be filed with your return, but they should be retained in case the CRA wishes to examine them later.