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Sorry everyone - despite looking hard, I couldn't find a funny quote about the fall. I guess I shouldn't be surprised - summer's over and next comes winter.

As we head into fall I have to express my disappointment in Mother Nature as I look out my window and see nothing but snow on the ground.

In this edition:

This publication is a high-level summary of the most recent tax developments applicable to business owners, investors, and high net worth individuals. Enjoy!

TAX TICKLERS... some quick points to consider...

- A large amendment to a T4 slip may trigger a payroll audit. Ensure that T4 slips are as accurate as possible at the outset.
- CRA may request taxpayer information from third-parties. A recent project using third-party data identified $86 million of unreported income and attracted over $19 million in additional taxes. CRA stated additional projects began in late 2017.
- A recent poll found that 51% of Canadians have no will, and only 35% have one that is up to date. Quebec and B.C. lead the provinces (58% and 54% respectively), with the less than 50% in all other provinces.

SUBSIDIZED MEALS: Are They a Taxable Benefit?

Do you have an employee dining room or cafeteria? In a March 21, 2018 **Technical Interpretation**, CRA stated that they **do not consider meals subsidized** by the employer to be a **taxable** benefit provided the employee pays a **reasonable charge**. This charge should be sufficient to cover the cost of the food, its preparation and service.

Where the charge is less than the cost, the difference would be considered a taxable benefit and should be included on the employee's T4. It is also important to note that the taxable benefit would be pensionable (CPP remittance required), but not insurable (no EI remittance required).

Action Item: Due to the tax cost to the employee, in addition to the administrative tracking costs, one should consider having employees pay at least a reasonable amount for meals provided.

Tax Tips & Traps

EMPLOYER-SPONSORED SOCIAL EVENTS: After the Party

In an April 9, 2018 French **Technical Interpretation**, CRA clarified their position on **taxable benefits** arising from **employer-sponsored social events, such as a holiday party or other event**.

Where the **cost** of the social event **does not exceed $150/person** (previously the limit was $100), excluding incidentals such as transportation, taxi fares and accommodations, there would be **no taxable benefit to employees**. CRA indicated that the cost should be computed **per person who attended**, and **not per person invited**.

If the cost exceeds $150/person, the entire amount, including the additional cost, is a taxable benefit to the employee. In these cases, only employees attending the function would be subject to the taxable benefit.

Action Item: Ensure the cost of employer-sponsored events do not exceed this threshold to avoid a surprise tax cost for employees.

PERSONAL USE OF BUSINESS AIRCRAFT: How Big of a Taxable Benefit Is It?

A **CRA communication** dated March 7, 2018 provided updated **commentary** on **taxable benefits** arising from the **personal use** of a **business aircraft**.

CRA categorized the types of flights into three groups, as follows:

- **Mixed-use flights** – If a shareholder or employee takes a flight which has a clear business purpose, they would not generally be subject to a taxable benefit. An individual's purpose is a question of fact. If others take the same flight (such as a non-employee spouse or child) for purely personal **purposes**, the **taxable benefit** would be equal to the **highest priced ticket** available for an equivalent **commercial flight** available in the open market for the accompanying individual(s).
- **Full personal use flights** – Where there is no business purpose to the flight, the shareholders or employees will be considered to have received a **taxable benefit** equal to the price of a **charter** on an **equivalent aircraft** for an **equivalent flight** in the **open market** (split amongst relevant individuals on the flight). Limited exceptions may apply where an open market charter is not a viable option.
- **Full personal use by non-arm's length persons** – For shareholders or employees who do **not act at arm's length** with the business (such as an owner who controls the business), **where** the **aircraft** is used **primarily for personal purposes** relative to the aircraft's total use, the **taxable benefit** will equal their **portion** of the aircraft's **operating costs plus** an **available-for-use amount**. The available-for-use amount is computed as the original cost multiplied by the prescribed interest rate for the percentage of personal usage. The available-for-use amount on leased aircrafts is based on the monthly leasing costs of the actual usage multiplied by the proportion of personal usage.

Taxable benefits in respect of passengers that are non-employee family members or friends would be assessed on the shareholder or employee.

Action Item: If employees are using a business aircraft for personal use, attention should be paid to whether employment benefits are being properly calculated and reported.

DIRECTORS: Can They Be Liable for Corporate Income Taxes?

A December 11, 2017 **Tax Court of Canada** case examined whether a taxpayer was liable for **unpaid income taxes** of the **corporation** of which he was a **director**. CRA's assessment was based on the assertion that the taxpayer was a **legal representative** of the corporation and had **distributed assets of the corporation** without having first obtained a **clearance certificate from CRA**.

A clearance certificate essentially confirms that the **corporation** has **paid all** amounts of **tax, interest and penalties** it owed to CRA at the time the certificate was issued. Legal representatives that fail to get a clearance certificate before distributing property may be liable for any unpaid amounts, up to the value of the property distributed.

Taxpayer wins

The Court examined whether the taxpayer was a legal representative and **personally liable** for the corporation's unpaid taxes. The **definition** of a legal representative does **not specifically include directors**, despite naming many other persons (e.g. a receiver, a liquidator, a trustee, and an executor). While a **director could become a receiver** or liquidator for a corporation, carrying out the **usual activities of a director**, such as declaring dividends, **would not** result in the director being a **"legal representative"**.

A director could **become a legal representative** where:

a. **additional powers** beyond directorship have been legally granted or, if not legally granted, were available and assumed;
b. these additional powers allowed the **legal representative** to legally and factually dissolve (**wind-up**) and **liquidate the corporation**; and
c. by virtue of these powers, the director **liquidated the assets** of the corporation.

In this case, **no such legal powers** had been conferred or exercised. The taxpayer was not considered to be the corporation's legal representative. Also, the corporation **had not been dissolved**. As such, the taxpayer was **not personally liable** for unpaid corporate income taxes.

Action Item: If you are a director and legal representative of a corporation, ensure that you are properly protected if distributing assets.

INTEREST ON DELINQUENT ACCOUNTS: Proper Disclosure on Legal Documents

In a November 10, 2017 **Alberta Court of Queen's Bench** case, the **amount** of a **creditor's claim** was challenged after an uncontested default judgment. The claim **included interest** calculated at 1% per month as stated in the contract. However, where a **rate is not stated in per annum terms**, the **legal maximum** is capped at **5% annually** under the **Canada Interest Act**. Therefore, the interest payable was legally capped at 5% per year, rather than the 1% per month specified by the contract.

Action Item: If stating interest rates in legal contracts, ensure to also state them in per annum terms.

DONATION RECEIPTS: How Complete Is Complete?

Charities should ensure that any **donation receipts** issued are **fully compliant** with the tax rules. Failure to do so may result in the donor being denied a charitable donation if reviewed by CRA. This could cause operational and goodwill problems for the charity.

Receipts for **cash gifts** must have the following:

- a statement that it is an official receipt for income tax purposes;
- the name and address of the charity as on file with CRA;
- a unique serial number;
- the registration number issued by CRA;
- the location (city, town, municipality) where the receipt was issued;
- the date or year the gift was received and the date the receipt was issued;
- the full name, including middle initial, and address of the donor;
- the amount of the gift;
- the amount and description of any advantage received by the donor;
- the eligible amount of the gift;
- the signature of an individual authorized by the charity to acknowledge gifts; and
- the name and website address of CRA.

Receipts for **non-cash gifts** must also include:

- the date the gift was received (if not already included);
- a brief description of the gift received by the charity; and
- the name and address of the appraiser (if the gift was appraised).

The amount of a non-cash gift must be the fair market value of the gift at the time the gift was made.

Effective **March 31, 2019**, **charities** and qualified donees must **include** the **new website** address of CRA, www.canada.ca/charities-giving on **all donation receipts**. This follows the move of various old Federal Government websites to the new official www.canada.ca website.

Action Item: If you are involved with a charity, ensure properly completed donation receipts are being distributed.

INTEREST DEDUCTIBILITY: Returns of Capital

In an April 20, 2018 **Tax Court of Canada** case, at issue was whether the taxpayer could deduct **interest incurred** in 2013, 2014 and 2015 related to **$300,000 borrowed** in 2007 **to purchase mutual funds**. From 2007-2015, the taxpayer received a **return of capital** from the funds, totalling $196,850 over the period. A return of capital is essentially a return of the taxpayer's original investment. The taxpayer used **some proceeds** to **reduce** the **loan principal**, but the **majority** was used for **personal purposes**.

Taxpayer loses

The Court examined whether there was a **sufficiently direct link** between the **borrowed money** and its **current use** in respect of gaining or producing income from the investments.

As much of the **returned capital** was used for **personal purposes**, there was **no longer a direct link** to the **income earning purpose**. The Court upheld CRA's denial of interest expense.

Action Item: Where funds are borrowed to invest, one may need to track any return of capital which is not reinvested to determine interest deductibility.

INPUT TAX CREDITS: Making Timely Claims

In a May 31, 2018 **Tax Court of Canada** case, the taxpayer **claimed ITCs** (arising from the December 2008 quarter-end) which were previously **disallowed** when claimed by a related party. Within 30 days of that decision, the taxpayer **claimed the ITCs** on their return for the **quarter ending September 30, 2015**.

Taxpayer loses

ITCs must be claimed **within four years** after the end of the reporting period in which they arise. It was **not relevant** that the **related party** had attempted to claim the ITCs within that period. **Failure** to make the claim **on a return** filed within **four years** of the end of the appropriate period was **fatal to the claim**.

Action Item: Ensure you are claiming your input tax credits in a timely fashion or risk losing them altogether.