Tax Partners®

Perspective. Insight. Advice.

Email: solutions@taxpartners.ca

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...

- Being **audited by CRA** does not mean that an individual will not be audited in the next year. Where CRA obtains additional tax as a result of an audit, the likelihood of a follow-up audit is generally increased.
- Certain **tax slips** (e.g. T4, T4A, T5 etc.) must now be **submitted** to the CRA **electronically** if more than 50 are to be sent. Penalties range from $250 to $2,500.
- A charity's ability to issue **donation receipts** can be put in jeopardy if it doesn't remove **partisan political comments** posted by third parties on its social media feeds (e.g. Facebook pages).

CRA USING SOCIAL MEDIA?

It is possible for the CRA, and other similar bodies, to use social media to **identify** taxpayers for **audits**, or even to use as evidence against the taxpayer in the course of a reassessment. For example, posts regarding the creation of large balances in a TFSA on **Linked-In, Twitter,** or **Facebook** may result in an audit of the individual's TFSA. If the CRA believes that an individual is carrying on an equity trading business within the TFSA account, they may challenge the tax-free status of the account.

It is also important to note that not only will a direct view of the post by CRA possibly result in an audit, but also, an anonymous tip could cause the same result. Every post puts the user at the mercy of the individuals in their network, and far beyond if it is shared.

Action Item: Caution should be taken when posting tax or other related information on social media.

GIFT CARDS FOR PROMOTIONAL PURPOSES: Are they Fully Deductible?

In a November 14, 2014 French **Technical Interpretation**, CRA was asked whether **gift cards** given away for **promotional purposes**, such as those provided to customers or clients, would be classified as a "meal and entertainment" expense which would reduce the deduction for tax purposes by 50%.

CRA indicated that their **general presumption** is that the 50% **reduction would apply** where the **main product** of the issuer of the gift card is **food or beverages**. They noted, however, that this presumption **could be rebutted** with appropriate supporting documentation.

Action Item: Consider giving gift cards to customers for stores and companies that do not primarily provide food, beverages or entertainment.

BOOKS AND RECORDS RETENTION: How Long Should I Keep my Documents?

In a May 11, 2015 **Technical Interpretation,** CRA was asked about the required period for **records retention.** CRA noted the following:

1. A **corporation's permanent records** (including Minutes of Directors' and Shareholders' Meetings, share registers, the general ledger, and any contracts or agreements necessary to understand the general ledger entries) must be retained until **two years** after the corporation is **dissolved**.

2. In the absence of an exception, a **corporation's non-permanent records** must be retained for a period of **six years** after the end of the **last** taxation **year** to which they **relate.** For example, invoices for the purchases of capital assets must generally be kept for 6 years after they are disposed, not just 6 years after purchase. All non-permanent corporate records on hand at the date of dissolution must be retained for **two years after** the date of **dissolution.**

3. Permanent records of an **unincorporated business** must be retained for **six years** after the end of the taxation year in which the business ceased, while other records must be retained for six years after the end of the last taxation year to which they relate.

Action Item: Review internal controls to ensure the permanent and non-permanent records (such as invoices for the purchase of capital assets) are retained for the appropriate length of time.

BLOGGER'S BUSINESS LOSSES: Personal or

In a June 19, 2015 **Tax Court of Canada** case, at issue was whether a former radio personality and sports journalist could claim **business losses** incurred for the 2011 and 2012 years to offset his other income. During these years, the taxpayer started and operated a **sports blog** with the intention of **selling advertising.** At question was whether he was operating a business or simply financing a hobby.

Taxpayer wins

The Court found that the taxpayer was **carrying on a business** and, therefore, was **entitled to deduct losses** in 2011 and 2012. The Court examined the taxpayer's "business-like" behaviour including:

- The **taxpayer's training** – The taxpayer had over 20 years' experience in sports reporting. He was not a sports fan believing he could be a journalist, rather, a professional sportswriter believing he could be a businessman.
- The **taxpayer's intended course of action** – While the taxpayer did not write a formal business plan or make financial projections, he did have a simple plan: write a quality blog and the sponsors will come. Although the taxpayer's course of action may have displayed poor business judgement, it was not lacking such commercial substance to conclude the venture was personal.
- The **capability** of the venture to show a **profit** – The taxpayer was not able to provide any solid data on projections, comparisons or readership numbers, rather he just provided a suggestion that readership was increasing. While not helpful, this was not fatal to his case.
- The **profit and loss experience** in the past years – This was not a significant issue as there were no past years to address.

The Court also noted that even if there is a **personal pursuit** (the taxpayer was a sports journalist and a sports fan), if the **operations** are carried out in a **sufficiently commercial** manner, the venture would still be considered a **source of income** (in other words, a **business**).

Action Item: When starting a business, ensure to fully document and execute "business-like" behavior to support the commercial substance of the venture.

TFSA CONTRIBUTION ROOM: Cautions and Possibilities

Although withdrawals from a TFSA are **added to the available contribution room**, the limit is increased only at the start of the **following calendar year**. As such, a series of **contributions and withdrawals** within a calendar year can expose the individual to significant costs in the form of a **1% per month tax** on excess contributions.

Also note that if an **adult child**, or other **relative**, has TFSA contribution room available, a **gift or loan** may be made to that person so that they may invest in their TFSA account. This would essentially **convert taxable investment income** of the wealthier person **into tax-free** income of the other.

TFSA contribution limits for specific individuals can be found by logging onto "**My Account"** at www.cra.gc.ca. Caution, however, must be taken when relying on these balances as the CRA may not have the most current information.

Action Item: Before contributing to a TFSA, individuals should consider their contribution room so as to avoid tax on excess contributions.

CRA COLLECTIONS: Watch Out!

The **CRA** has **special abilities to collect debts** from taxpayers where amounts are left outstanding for too long. Some of the issues to be considered when dealing with CRA collections include:

- CRA has the ability to **garnish** one's **bank account** or **wages.**
- CRA can **reduce government payments**, such as **CPP**, when amounts are outstanding.
- If a taxpayer is disputing an assessment or amount outstanding, payment of the assessed amount will **not generally impact** the success, or failure, of their objection.
- It may be beneficial to **pay** the **outstanding amount** even if an assessment will be disputed. If the objection is successful, the CRA will pay taxable interest of 3% to individuals (1% to corporations). If unsuccessful, the taxpayer will avoid non-deductible interest CRA charges of 5%. These rates are re-evaluated quarterly.
- In some cases, CRA is **restricted** in their **ability to collect** where a taxpayer has objected or appealed. However, the Tax Act **does not limit** collections for debts such as **source deductions**, and **GST/HST**.
- Collection restrictions may be lifted where a delay puts collection **at risk**.
- **Giving** assets to non-arm's length parties (such as a spouse or child) in an attempt to prevent CRA from collecting, can cause the recipient to also be liable for a portion of the tax debt.

Action Item: Consider paying an amount in dispute with CRA to avoid accruing non-deductible interest should you lose your Objection or Appeal.

REQUEST FOR A CHANGE TO THE FISCAL PERIOD: Simplify your Reporting

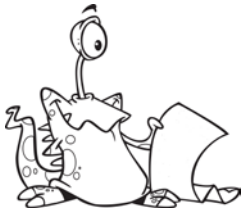
In an October 16, 2014 **Technical Interpretation**, CRA noted that they may **accept** a **change** to a taxpayer's **fiscal period**. However, the request to change should only be approved when the request is prompted **solely** on **sound business reasons** other than to obtain a tax benefit. Changes for the personal convenience of the taxpayer and to defer taxes would not be permitted.

CRA provided a non-exhaustive list of reasons that could constitute a **sound business reason**:

- a corporation changes its fiscal period to end on the **same date** as its **parent** or **associated** company;
- a corporation changes its fiscal period to end when its **inventory** is at a seasonally low level;
- a corporation changes its fiscal period to **ease financial reporting**.

Action Item: If it makes sense, due to a sound business reason, to change the fiscal period, contact us to consider making an application.

PROVIDING INFORMATION TO CRA: But I Don't Want To!



In a May 14, 2015 **Federal Court of Canada** case, the taxpayer was found to be in **contempt of Court** for not providing CRA with documents as ordered. This case is an **example** of what may occur when **documents are not provided**, as requested, to CRA. The actions proceeded as follows:

- March 3, 2013 – CRA made seven **requests** of documents to be provided in 30 days.
- July 12, 2013 – CRA obtained a **Court Order** requesting the documents.

- February 4, 2014 – The taxpayer was found in **contempt of Court** for not providing the documents and was fined $1,500, assessed court costs of $2,500, and again required to provide the documents.
- May 14, 2015 – The Court found the taxpayer in **contempt again** for continuing to not provide the required information. The taxpayer was required to pay an additional fine of $2,000, and $3,000 in court costs.

Action Item: Contact us as soon as CRA contacts you or requests information. Delaying action could be very costly.

INSURABLE EMPLOYMENT: Loss of EI Benefits for Maternity Leave

In a January 23, 2015 **Tax Court of Canada** case, the worker (spouse of the sole shareholder) was determined by a CPP/EI Rulings Officer to **not** be **engaged** in **insurable employment** with the Company because she and the Company were **not** dealing with each other at **arm's length**.

This would mean that EI contributions would not have to be remitted, however, EI benefit claims could not be received either.

A spouse, or family member of the shareholder may earn insurable amounts only if their employment contract is **substantially similar** to one that would be **accepted by** an **arm's length** party.

Taxpayer loses

The **Court** considered **various factors** to determine that the contract was **not substantially similar** to one that would be accepted by an **arm's length party**, including:

- the worker was **not paid on a regular basis** and was paid **below market rate** for her services;
- the worker **did not track her hours**, nor did she receive overtime payments;
- the financial performance of the **Company** indicates that it **did not have the finances to support the worker's position** – this led to the inference that the position was introduced to provide employment to the worker; and,
- the payer was **unable to hire a replacement** when the worker went on maternity leave – another indication no one other than the spouse of the shareholder would be willing to accept similar terms of employment.

Action Item: If the business owner is employing family members, contact us to determine if their earnings are insurable.

CANADA U.S. BORDER INFORMATION EXCHANGE

As of July 1, 2014 Canada and U.S. Immigration began to **share their Canada-U.S. entry and exit data** with each other. However, the U.S. may **not be aware** of when a Canadian **departs from the U.S.** in certain cases. This may result in **incorrect data** being provided to Canada about the number of days that a Canadian resident spends in the U.S..

Action Item: This possibly incorrect information, coupled with increased information exchange, makes it particularly important for Canadians to carefully track their entries and exits.