Crowe Soberman | Canada

The Checkup

Tax planning, insights and advice for health professionals.

2021 Edition

EDITOR'S MESSAGE
A look back at the past year.

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The Checkup is prepared for the general information of our clients and other friends of Crowe Soberman. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this publication.

A Message from the Editor

Aaron Schechter, CPA, CA, TEP, Aaron Schechter Professional Corporation, Partner, Tax

There has been a lot of time dedicated to the hardships that COVID-19 brought us in 2020. While it was no doubt an unprecedented and difficult year, I was personally disappointed in the number of articles, social media posts, and news stories that proclaimed we were happy to see 2020 come to an end. I agree that in 2020 many of us faced tough circumstances – losing a job, losing a loved-one, performing our occupational livelihoods under atypical conditions – however, most of us made it to 2021. I am big proponent of life being a series of challenges and we become stronger by overcoming these obstacles. It is this that I think needs to be celebrated, embraced, and acknowledged as we reflect on 2020 and look forward to 2021.

Last year, many of us needed to find new ways to do our jobs, whether that was through remote working, video chats (please remember to turn off your cat filters), wearing personal protective equipment when treating patients, retrofitting our places of work to accommodate COVID-19 restrictions, etc. Even though we are probably a bit worse for wear, we persevered and overcame these challenges. In turn, they made us more resilient, mentally, and physically stronger, and proved that we don't give up in the face of adversity.

In addition, in 2020, many of us were not running around taking our kids to programs; we were not rushing to leave for work in the morning only to be stuck in traffic; our children were home more, learning remotely and not going to summer camp or attending extra-curricular activities. We were more present in the moment. We had more time for our immediate families. We had more time for our spouses. We had more time for our friends. We reconnected with ourselves by slowing down, by finding a new hobby, or by simply not doing anything.

Personally, a part of me is sad to say goodbye to 2020. I am happy with the person I am coming out of the past year. I have become a better husband, a better father, a better friend. I for one am excited for 2021.

I would be remised if I didn't give a special shout out to all those people on the front lines – these are the true heroes since the pandemic started, risking their lives every day to make our lives safer. Thank you.

So, here it is, *The Checkup* newsletter for 2021, packed with great articles written by Crowe Soberman LLP. Adam Gur discusses when a tax return becomes "statute-barred" and whether the Canadian tax authorities can reopen and reassess your tax returns. Kiren Sethi and Jin Hu collaborate on an article on how to mitigate double taxation on the death of a shareholder of a professional corporation. Chandor Gauthier and Denise Batac want to make sure you know if you are eligible to claim home office expenses and what can be deducted in your 2020 personal tax returns. Finally, our newsletter summarizes the key 2021 tax deadline dates, including upcoming due dates for the wage and rent subsidy claims.

I wish you all the best for 2021 and if you think we can assist with any of your accounting or tax needs, please reach out and we would be happy to provide a solution.

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How Far Back Can the CRA Reassess Your Tax Return?

Adam Gur, BBA, CPA, CA, Manager, Audit & Advisory

Many taxpayers worry about the Canada Revenue Agency ("**CRA**") coming back to reassess a previously filed tax return. When the CRA reassess a tax return, often it is the result of determining that you owe more than you originally paid on the initial filing and assessment. We answer some of our most asked questions and provide clarity behind the CRA's assessment window below.

Does the CRA have the authority to reassess your income tax return indefinitely?

The good news is that the CRA generally does not have this ability. The Income Tax Act ("**ITA**") sets out a window of time where the CRA is permitted to reassess a tax return. This period, commonly referred to as the "normal reassessment period", is three years from the date the Notice of Assessment, issued by the CRA, and is applicable to individuals, trusts and Canadian Controlled Private Corporations. The normal reassessment period for non-Canadian Controlled Private Corporations is extended to a period of four years. Once the normal reassessment period has expired, the tax return is considered statue-barred and the CRA is generally precluded from reassessing and levying additional taxes and/or penalties.

Are there any exceptions to the rule?

The normal reassessment period can be extended by an *additional three years* under various circumstances, including where a taxpayer carries back a loss or a credit, there has been a non-arm's length transaction between the corporate taxpayer and a non-resident which may affect the corporation's tax, or where a reassessment of another taxpayer's taxes has occurred which may affect the corporate taxpayer's tax.

More importantly though, the ITA permits the CRA the right to an indefinite reassessment window where the taxpayer, in filing their income tax return, has made a misrepresentation attributable to neglect, carelessness, or wilful default.

Don't worry. Honest errors will generally not be construed as a misrepresentation.

Honest errors, on their own, will generally not result in the reopening of a statute-barred tax return, unless such error is coupled with the behaviour of neglect, carelessness or wilful default. A couple of notable court cases recently have shed light on the application of the misrepresentation test for taxpayers.

Case #1: Savoie v. Her Majesty the Queen

Facts: Dr. Savoie was a radiologist who entrusted his accountant to prepare the tax return for his company. Dr. Savoie provided his accountant with all the financial information for the corporation, including bank and credit card statements, invoices and receipts without distinguishing between his personal and corporate expenses. The taxpayer alleged that his accountant informed him that he had computer software that enabled him to separate personal from corporate expenses. Upon review, the CRA determined that 78 per cent of all expenses claimed in the tax returns, which were statute-barred, were personal in nature and were not incurred for business purposes. The non-business expenses were denied, the corporate taxes increased significantly and Dr. Savoie was assessed a taxable benefit for the expenses paid for by the corporation. Dr. Savoie alleged that he exercised due diligence and could not be held responsible for the negligence of his accountant.

Analysis: The court found that Dr. Savoie made no effort to understand his tax returns and review them in detail with his accountant. Moreover, the taxpayer was an educated and intelligent medical practitioner that ought to have questioned how his personal expenses could have been excluded, without providing specific details to his accountant.

Conclusion: The evidence showed that Dr. Savoie did not exercise due diligence. The court concluded that the taxpayer misrepresented the income tax returns through negligence and/or inattention, and therefore the CRA was permitted to reassess beyond the normal reassessment period.

Case #2: Rick Hansen v. Her Majesty the Queen

Facts: Mr. Hansen bought and sold five houses from 2007 to 2012 and claimed the principal residence exemption on the disposition of each house. The result was no personal taxes were owed by Mr. Hansen, even though each of the properties had appreciated in value. Mr. Hansen renovated each of the five houses purchased during the said years and lived in each for less than one year. He informed his accountant of all the property transactions, his original intentions for each property and the reasons for their sale. The accountant concluded that the principal residence exemption applied to each of these transactions. The CRA denied the principal residence exemption for every year, including 2007, 2008 and 2009 which were statute-barred, on the basis that the gains should be re-characterized as income from a business or adventure in the nature of trade.

Analysis: The court examined the method of financing, the frequency of the transactions, and the duration of ownership of each property and sided with the CRA's justification for the denial of the principal residence exemption. The court further analyzed whether the CRA was precluded from reassessing the 2007 to 2009 statute-barred years and rested its decision on two main facts: one, Mr. Hanson personalized each of the homes to his liking, which suggested that his primary intent was to hold the properties for longer than one year; and, two, he sought the advice of his accountant who, after seeking relevant information pertaining to the sales, had determined that the transactions would qualify for the principal residence exemption.

Conclusion: The CRA was precluded from reassessing the statute-barred years. The court cited the decision of another case which stated that, "*The CRA cannot reassess after the normal period where a taxpayer thoughtfully, deliberately and carefully assesses the situation and files on what he or she believes bona fide to be the proper method in treating the profits as capital gains."* The court further concluded that just because a taxpayer's position contradicts the CRA's position, does not mean the taxpayer has made a misrepresentation.

Can a taxpayer amend a tax return that is statute-barred for an honest mistake?

Individuals may realize that they failed to claim a deduction or a credit in a personal tax return that is now statute barred. Under the CRA's Taxpayer Relief Program, the CRA has the discretion, but not the obligation, to allow a taxpayer-initiated amendment request to a statute-barred year for any of the prior 10 years.

Future Considerations

Although an amendment of a statute-barred return may result in a tax refund, the new Notice of Reassessment restarts the three-year normal reassessment period again. It may be prudent to consider whether there are any contentious filing positions and/or complex tax issues in the tax return prior to requesting the amendment, as these positions and tax issues may result in higher taxes should the CRA reassess during this new reassessment window.

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What Happens to the Professional Corporation When the Professional Dies?

Post-Mortem Estate Planning Strategies

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The use of a professional corporation offers the health professional the advantage of a tax deferral on professional income. That tax deferral, however, generally, comes to an end when the last of the individual and his or her spouse dies. If careful planning is not undertaken by the beneficiaries of the professional's estate, the professional corporation's earnings can be subject to combined tax rates of close to 80 per cent. Tax practitioners call this the "double taxation on death" issue. The good news, though, is that there are ways to mitigate this problem.

When the Double Taxation Issue Arises

Suppose the professional is able to build up a retirement nest egg within their professional corporation ("**PC**") during their professional career. Following retirement, the PC must be converted into a regular corporation (i.e. a non-professional corporation). During retirement, the professional will draw on some of the funds in the corporation for personal living needs.

If the professional predeceases his or her spouse, the *Income Tax Act* allows for the shares of the corporation to be transferred to the surviving spouse tax-free. When the last of the professional and their spouse passes away, the value of the shares of the corporation is taxed as a capital gain in the deceased's personal income tax return. If the beneficiaries (often the deceased's children) want to access the funds in the corporation, a dividend is paid out and either the estate or the beneficiaries themselves are taxed on the dividends. Hence, two levels of tax – double taxation.

This is one common situation where double taxation may arise; however, there are other potential scenarios such as where the professional's parent owns shares of the PC when they die. There is no provision in the *Income Tax Act* that permits a tax-free transfer of shares from a parent to a child and "double taxation" could arise.

The Subsection 164(6) Election Solution

This option to mitigate the double taxation issue involves creating a capital loss within the first taxation year of the deceased's estate, which is then used to offset the capital gain triggered on death.

Shortly after death, but no later than 12 months after the individual passes away, the corporation's shares owned by the deceased are redeemed or the corporation is wound up. The result is that the estate is deemed to have received a dividend from the corporation. The redemption or windup also creates a capital loss which can be used to offset the capital gain reported in the deceased's final tax return.

The specific details of the 164(6) Election Solution are beyond the scope of this article, but there are a few key considerations readers should be aware of:

- The trustees of the estate must file, what is commonly referred to as, a "164(6) election" to apply the capital loss against the capital gain;

- This plan must be implemented within the first taxation year of the estate, which cannot surpass the first anniversary of the deceased's death. There are situations, where this period is less than 12 months after the death of the individual;

- The 164(6) election is only available for Graduated Rate Estates. Generally, when a Canadian individual passes away their estate will be a Graduated Rate Estate;

- If the corporation has owned investments during its existence, there may be opportunities to reduce the overall taxes by utilizing the Capital Dividend Account (CDA) and/or one of the Refundable Dividend Tax on Hand (RDTOH) balances in the corporation; and

- If the corporation owns life insurance on the deceased, there may be opportunities to further reduce or even eliminate the taxes on the deemed dividend.

The Pipeline Planning Solution

This option involves creating a "pipeline" which can provide a staggered extraction of corporate funds without incurring the "double taxation". The deceased's estate transfers its shares of the corporation to a newly incorporated corporation ("**Newco**") in exchange for a promissory note. No tax should be triggered on the sale of shares to Newco. Based on the Canada Revenue Agency's position, it is recommended that the corporation continue to invest its funds and the parties wait for at least one year before the corporation and Newco amalgamate. Subsequent to the amalgamation, the amalgamated corporation can use its funds to pay off the promissory note, again, without a second level of tax to the estate or the beneficiaries.

Depending on the situation, pipeline planning can be used to obtain a step up of the cost base of the investments in the amalgamated corporation thereby potentially reducing the corporate income tax as well.

Final Thoughts

The "double taxation" problem is a real tax issue that can significantly reduce the amount of money the beneficiaries of the deceased ultimately receive. There are a few ways to mitigate, reduce or possibly even eliminate this issue, but there is not a "one size fits all" solution. There are many factors to consider in determining the most tax-efficient post-mortem tax planning strategy.

If you would like more information on any of these estate planning strategies or would like to discuss how you can avoid the "double taxation" issue for your specific situation, please contact Crowe Soberman's Tax Group.

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Claiming Home Office Expenses During COVID-19

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Whether or not a self-employed health professional can claim home office expenses in his or her personal tax return has always been a "grey" subject. The Canada Revenue Agency (the "**CRA**") and the Tax Courts, at times, have differed on whether certain self-employed practitioners are eligible for this claim. In 2020, because of COVID-19, some professionals found themselves working more at home, while others, were likely putting in more hours in a hospital, clinic, or another non-home setting. For 2020, the CRA has changed both the eligibility for a home office expense claim and how individual taxpayers calculate this amount.

Who can claim home office expenses?

For 2020 only, individuals who worked from home more than 50 per cent of the time over a period of at least four consecutive weeks due to COVID-19 will be able to claim home office expenses.

To avoid the detailed tracking of expenses, the CRA has introduced a simplified method to claiming home office expenses. The simplified method is a new temporary flat rate of $2 per day for each day worked at home, to a maximum of $400. In calculating the workdays, individuals must use the days that they worked full-time or part-time from home, but not days of absence (i.e., vacation days, sick days, or other days off).

If, instead, an individual wishes to claim home office expenses under the regular "detailed" method (rather than the temporary flat rate method noted above), they must either: (1) complete more than 50 per cent of their work duties from home; or (2) the home office must be used on a regular and continuous basis to meet with patients, customers, clients, etc.

With COVID-19 and social distancing requirements, face-to-face meetings with clients/customers/patients has been much less common. The CRA has not yet clarified whether virtual meetings and appointments qualify as "regular and continuous" for the purposes of being eligible to claim home office expenses, but if this is your situation, you may be able to meet the eligibility requirements by having spent more than 50 per cent of your working time in your home office.

What expenses can be claimed?

The expenses that qualify for a home office expense claim for a self-employed taxpayer would generally include:

- Heat
- Electricity
- Water
- Home insurance
- General repairs and maintenance to the home office itself
- Mortgage interest
- Property tax or rent

If you are an employee (i.e., you take a salary from your professional corporation), the expenses that qualify for a home office expense are limited to:

- Heat
- Electricity
- Water
- General repairs and maintenance to the home office itself
- Rent

The total annual amounts for the above expenses would need to be prorated based on the square footage of the home office relative to the square footage of the entire home. For 2020, the CRA has provided many examples of how to calculate the square footage percentage in situations where a home office is shared with other family members or a specific area, which is not typical of a home office, say a dining room table, is used.

Consider other deductible expenses

While not considered to be expenses eligible to be deducted as part of your home office, you should also consider expenses such as supplies (i.e., pens, pencils, ink cartridges, stamps, stationery, file folders, etc.) and internet costs, both of which are integral and essential to carrying out your business in the work-from-home environment. These amounts can be claimed as expenses against your self-employment income. Long-distance telephone calls, cellular minutes and the cost of a cellphone plan that reasonably relate to carrying on your practice may also be deductible.

Final thoughts

We have never been through a pandemic of this magnitude and the government continues to adapt and modify administrative policies to address the changing economic environment. To ensure you can maximize possible deductions when completing your 2020 personal income tax return, keep all of your receipts and invoices for purchases, invoices for home expenses like heat, hydro, water, internet, etc. and stay tuned to see what the CRA releases in the coming months to address the fact that so many of us have been working from home during COVID-19.

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Important Tax Deadlines

February 25, 2021

- Last day to file a claim for Period 6 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between August 2 and August 29, 2020.

March 1, 2021

- Filing due date for T4 Summaries and slips for salaries, bonuses, and retiring allowances paid in 2020.
- Filing due date for T5 Summaries and slips for interest and dividends paid by corporations, partnerships and trusts in 2020.
- Last day to make a 2020 RRSP contribution.

March 15, 2021

- Filing due date for Employer Health Tax (EHT) returns for employers with salary and bonuses paid of $1,000,000 or more in 2020.
- First quarterly installment due for 2020 personal income taxes (if applicable).

March 25, 2021

- Last day to file a claim for Period 7 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between August 30 and September 26, 2020.

March 31, 2021

- Filing due date for T5013 Summaries and Slips for professional partnerships where the partnership's total revenues plus total expenses is $2,000,000 or greater, or where any of the partners are professional corporations.
- Filing due date for annual filers of HST returns for corporations with taxation years ending December 31, 2020.
- Final payment of corporate income taxes due for most corporations with a December 31, 2020 fiscal year end.

April 15, 2021

- Last day to file a claim for Period 8 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between September 27 and October 24, 2020.
- Last day to file a claim for Period 1 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between September 27 and October 24, 2020.

April 30, 2021

- 2020 Canadian personal income taxes due; personal income tax return filing due date for most Canadian taxpayers.

May 20, 2021

- Last day to file a claim for Period 9 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between October 25 and November 21, 2020.

Important Tax Deadlines

- Last day to file a claim for Period 2 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between October 25 and November 21, 2020.

June 15, 2021

- Personal income tax return filing due date for Canadian taxpayers who report self-employment income.
- Second quarterly installment due for 2020 personal income taxes (if applicable).

June 17, 2021

- Last day to file a claim for Period 10 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between November 22 and December 19, 2020.
- Last day to file a claim for Period 3 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between November 22 and December 19, 2020.

June 30, 2021

- Filing due date for corporate income tax returns for professional corporations with a December 31, 2020 fiscal year end.

July 15, 2021

- Last day to file a claim for Period 11 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between December 20, 2020 and January 16, 2021.
- Last day to file a claim for Period 4 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between December 20, 2020 and January 16, 2021.

August 12, 2021

- Last day to file a claim for Period 12 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between January 17 and February 13, 2021.
- Last day to file a claim for Period 5 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between January 17 and February 13, 2021.

September 9, 2021

- Last day to file a claim for Period 13 of the Canada Emergency Wage Subsidy (CEWS) in respect of wages between February 14 and March 13, 2021.
- Last day to file a claim for Period 6 of the Canada Emergency Rent Subsidy (CERS) in respect of expenses paid between February 14 and March 13, 2021.

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