Crowe Soberman | Canada

The Checkup

Tax planning, insights and advice for health professionals.

2020 Edition

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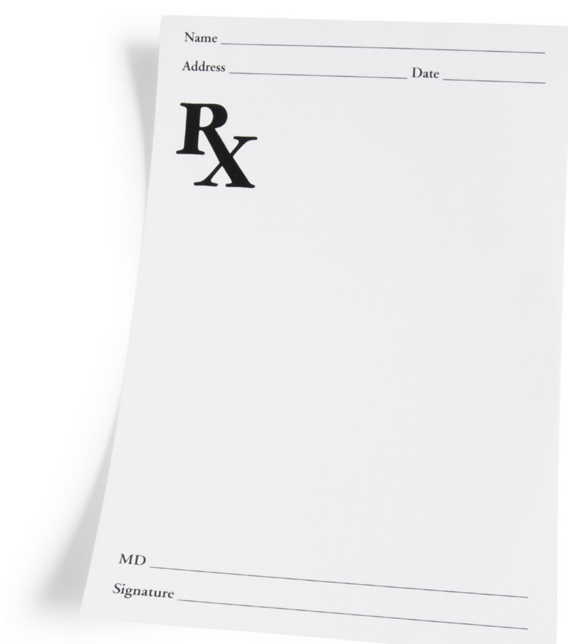

A Message from the Editor

Aaron Schechter, CPA, CA, TEP, *Aaron Schechter Professional Corporation*, Partner - Tax Group

Benjamin Franklin is credited with penning the words, "In this world nothing can be said to be certain, except death and taxes." Based on this quote, perhaps he secretly wanted to add "accountant" to the long list of endeavours he pursued, which included writer, politician, scientist, inventor, philosopher, amongst many others.

To most people's relief, these two certainties are only encountered periodically, but for accountants, we live them almost daily. As accountants, we need to take care of our client's tax compliance and filings and we need to proactively seek out opportunities to undertake tax planning to minimize our client's tax liabilities; however, we also need to advise our clients on how best to prepare and plan for the other certainty – death. This is the crossover. It is important for accountants to encourage their clients to have updated wills in place, to execute Powers of Attorney for both personal care and property, as well as to consider a well-thought out post-mortem plan which includes how best to distribute his or her estate and make philanthropic gifts in the most tax efficient manner.

I spent a considerable amount of time dealing with death and taxes in 2019. Personally, I lost a family member and two clients in 2019, mediated a family meeting consisting of five siblings wherein we proposed a complex, but necessary, post-mortem tax plan to minimize the tax liability associated with the patriarch's inevitable passing, and presented selected estate tax planning issues and considerations to the members of the Society of Tax and Estate Practitioners (STEP). We are here to help. If you need assistance dealing with these issues and/or want to plan for your eventual passing or the passing of a family member, please reach out.

Although he can be excused for doing so, Benjamin Franklin missed identifying a third certainty in this world – a jam-packed, informative and interesting issue of *The Checkup*. This edition will surely not disappoint. Kiren Sethi discusses the tax benefits of donating publicly-traded shares and life insurance policies to charities; Alana Engelberg explains the Canada Revenue Agency's policies on how gifts made to employees are taxed; Andrea Nagy navigates us through the options for an insolvency involving significant tax debts; and selected principal residence exemption issues are addressed by Rustem Moldagazinov. We have also updated the due dates for certain tax filings and payments coming up in 2020.

Enjoy!

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Gifts To Employees: Taxable or Non-Taxable?

Alana Engelberg, CPA, CA, Manager

Often employers provide gifts to their employees as a token of appreciation for a job well-done, putting in extra hours, hitting a work milestone or to celebrate a life event or religious holiday. Much to their surprise (as well as the employee's surprise), there may be tax consequences to giving gifts and awards.

The Canada Revenue Agency's (the "CRA") administrative position is that cash and near-cash (i.e. gift cards, gift certificates, or anything else that can be readily converted into cash) gifts are considered a taxable benefit to the employee and should be reported on his or her T4 Slip at the end of the year. Similarly, a cash or near-cash award for an employee performance related accomplishment is also considered additional remuneration or a taxable benefit to the employee, both of which are required to be reported on the employee's T4 Slip. In other words, cash and near-cash gifts and awards, regardless of the amount, are taxable benefits to be included in an employee's income.

An employer can give unlimited non-cash gifts or awards to an employee; however, under the CRA's general non-cash gifts and awards policy, these non-cash gifts and awards are only tax-exempt if the combined total value does not exceed $500 in a particular year. Any non-cash gifts or awards over the $500 limit would be considered a taxable benefit and should be included in the employee's income. When calculating the total value of the non-cash gifts given in a year, items of a trivial amount can be excluded. Paying for an employee's coffee, giving a mug or golf shirt with a corporate logo are a few examples of gifts that would not count towards the $500 limit.

Examples of gifts and awards given to an employee during a tax year and their respective tax implications are outlined below:

Gifts and Awards	Value	Taxable to the Employee?	Explanation
Tim Hortons gift card for attending an after-hours meeting	$50	Yes	Near cash gift
Hockey tickets for working overtime	$300	Yes	Would be considered additional compensation
Kitchen appliance as a wedding gift	$200	No	Non-cash gift under $500 (Note 1)
Mug with corporate logo	$10	No	Non-cash item with trivial value
Google Home as a holiday gift	$150	No	Non-cash gift under $500 (Note 1)
Concert tickets for running a successful corporate event	$250	No	Non-cash gift under $500 (Note 1)
Best Buy gift card for a birthday	$100	Yes	Near cash gift

Note 1: The kitchen appliance, Google Home, and concert tickets are all non-cash gifts and awards which are eligible for the $500 tax-exempt limit. If a single employee was to receive all of these non-cash gifts and awards in a particular year, the total value of the gifts would exceed the limit (i.e. $600 ($200 + $150 + $250)), and the employee would have a taxable benefit of $100.

Long Service Awards

The CRA has a different administrative policy for non-cash gifts and awards given to employees in recognition of continued service. An employer can give a non-cash long service award to an employee worth $500 or less if she or he provided services for a minimum of five years. So long as it has been at least five years since the employer last gave the same employee a long-service award, the non-cash award is not taxable to the employee. For example, if an employer gave an employee a non-cash award at the end of Year 5 and then again at the end of Year 8 in recognition for his or her long service, the full amount of the award for Year 8 would be considered a taxable benefit to the employee. Any non-cash gift or award for long service worth more than $500 would also be considered a taxable benefit to the recipient.

It is important to note that the $500 exemption for non-cash long service awards is separate from the $500 exemption for other non-cash gifts and rewards. Accordingly, an employer can give a non-cash award of up to $500 related to long service and up to $500 of non-cash gifts or awards under the general exemption with no tax implications to the employee. If the value of the non-cash gifts or awards is more than the $500 limit, an employer cannot add the surplus to the long service award exemption and vice versa.

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Understanding Principal Residence Exemption Issues

In today's booming real estate market, major urban hubs, such as Toronto, see home ownership rates decreasing among the younger adult population who increasingly find themselves unable to afford owning a home. Parents are now starting to rent a portion of their matrimonial home or a condo previously used for investing purposes to their adult children. In other instances, young homeowners are renting out a portion of their residence to subsidize the high costs of home ownership. In these situations, it is important for homeowners to maintain the eligibility of the principal residence exemption ("PRE") which can shelter all or a portion of the capital gain on a disposition of a personal use home.

Renting to Children

In *Technical Interpretation 2016-0625161C6 – Principal Residence Rented by Child*, the CRA was asked whether a taxpayer's property, which was designated as his principal residence and rented to his son who inhabited the property with his family, was eligible for the PRE. The taxpayer lived in a seniors' residence. During the 10 years the son and his family lived in the property, the taxpayer charged him below market value rent. The CRA responded that the property met the definition of a "principal residence" under section 54 of the Income Tax Act (the "ITA") and the taxpayer could claim the PRE when the property was eventually sold. It was of no importance to the CRA that the rent charged to the son was below fair market value.

Changes in Use

Under the ITA, when the use of a property changes from personal to income-producing or from income-producing to personal, the owner is deemed to have sold and reacquired the property at the fair market value prevailing at that time. These rules are referred to as the "change in use rules". Like an actual disposition, where there is a change in use, taxpayers are required to calculate any capital gain or loss resulting from the deemed disposition.

Converting part of a principal residence, such as a basement or one of the floors in a duplex, from personal to income-producing or vice versa constitutes *a partial change in use*. While a change in the complete use of a property will automatically cause a deemed disposition, in certain circumstances, a partial change in use may not cause an immediate deemed disposition.

Proportionate Change

In *CRA's Technical Interpretation 2012-0445241E5*, the CRA was asked whether a duplex with two separate residential addresses, entrances and property tax bills, could be considered a single housing unit for the purpose of claiming the PRE on the whole property. The lower-floor apartment was always inhabited by the taxpayer while the upper-floor apartment was initially vacant, then rented to the taxpayer's son, and then finally used as a storage space. Similarly, in *Technical Interpretation 2011-0421051E5*, the CRA was asked whether a couple who began operation of a "bed and breakfast"

business out of their principal residence would be permitted to treat the converted area as an integral part of the principal residence allowing them to claim the exemption on the entire property. In both cases, the CRA commented by saying generally two living units of a single housing unit would be considered a single principal residence for the purpose of claiming the PRE where both living units are integrated sufficiently such that the complete enjoyment of the main unit is dependent on the use and access to the secondary unit.

In *Technical Interpretation 2016-0652841C6 – Partial Change of Use*, the CRA considered the situation where a person owned a triplex, in which he lived in and rented. The taxpayer owned the property for a total of 16 years and during the first 10 years, he and his family used the larger unit of the triplex as their principal residence while renting the two smaller units. The family then moved into the two smaller units to live in for the next six years while renting the larger unit to unrelated parties. In this case, the proportion between personal and rental use remained at 50 per cent before and after the family changed units. As a result, the deemed disposition rules did not apply in Year 10 since the taxpayer maintained a consistent personal use percentage following the move. The CRA confirmed that the change in use rules do not apply when the relative proportions between personal and rental use do not change.

In yet another technical interpretation *(2010-0360451E5)*, a question was posed to the CRA asking whether there is a *de minimis* threshold that could be applied to determine what constitutes a change in use where the use is mixed and the income-producing and personal uses fluctuate on an annual basis. The CRA's position was that a deemed disposition would generally not apply where:

- The income-producing use is ancillary to the main use of the property as a residence;

- There is no structural change to the property; and

- No capital cost allowance is claimed on the property.

This position is further confirmed in the CRA's *Income Tax Folio: S1-F3-C2, Principal Residence*.

The key takeaway from the situations above is that a partial change in use may not always create a deemed disposition.

Deemed Disposition Election

In certain circumstances, when the use of a property changes from income-producing to personal or from personal to income-producing, an election is available to defer any capital gain that would otherwise be realized. In addition, if conditions are met, the property can be designated for four years as a principal residence while it is income-producing for purposes of the PRE. Previously, these elections were only available when there was a complete change in use of the property; however, as announced in the 2019 Federal Budget, they are now also available on a partial change in use occurring on or after March 19, 2019.

TAX SERVICES

Crowe Soberman's Tax Group helps companies and private clients understand federal, provincial and international tax obligations so they can optimize their tax position. We adapt our strategies to meet our clients' individual needs and take advantage of tax-saving opportunities available to you.

Charitable Donations: The Benefit of Non-Cash Contributions

Kiren Sethi, Junior Staff Accountant

Making cash charitable donations certainly has benefits for taxpayers and charities, but have you considered donating non-cash assets such as shares or a life insurance policy? These alternatives may provide an even greater tax benefit for the donor and will leave the charity with more money to fund its charitable endeavours.

Donating Shares

To illustrate, suppose you are a high-income earner living in Ontario. You have already donated $200 or more to a charity earlier in the year and now wish to make another donation. You currently own shares of a publicly traded company worth $5,000 which you originally acquired a few years ago for $2,000.

You can either sell the shares and donate the after-tax proceeds, or you can make an in-kind donation by donating the shares directly to the charity.

Let's compare:

	Donate Proceeds	Donate Shares
Capital Gain Inherent in the Shares	$3,000	$3,000
Fair Market Value ("FMV")	$5,000	$5,000
Tax on Capital Gain	($803)	$0
Donation Amount	$4,197 →	$5,000
Tax on Capital Gain	($803)	$0
Donation Tax Credit	$2,116	$2,520
Tax Credit Available Towards Remaining Personal Taxes	$1,313 →	$2,520

Analysis

When donating publicly traded securities to a charity, the Income Tax Act exempts the accrued capital gain from income tax. Not only is there no tax on the capital gain, but the proceeds received by the charity will be greater since it can sell the shares without incurring any tax liability (charities are tax exempt entities).

The larger the accrued gain inherent in the shares, the greater the benefits for the taxpayer/donor and the charity.

Considerations

This strategy will not yield the same results if the shares are held inside a registered account (e.g. RRSP or TFSA).

In addition, the shares being donated must be listed on a designated stock exchange. The accrued gain inherent in shares of private companies is not tax exempt if donated to a charity.

Donating Life Insurance

Life circumstances change and you may feel that you no longer have a need for your existing life insurance policy. If you are contemplating letting the policy lapse, first consider if it makes sense to donate it to a registered charity instead.

Possible reasons you may be rethinking continuing to own an existing life insurance policy include:

- The beneficiary was your spouse, and she or he has passed away;
- The policy was for your children, but they are now grown up and financially well-off; or

• The premiums are too expensive.

By donating a life insurance policy, you or your estate will receive a sizeable donation tax credit, and the charity will receive far more from the death benefit than the amount put towards the premiums.

Scenario 1

You own a term-to-100 life insurance policy. If you cancelled the policy or let it lapse, premiums would no longer be owed, but at the same time, you would receive nothing in return. Alternatively, you could designate a charity as the irrevocable beneficiary and transfer ownership of the policy to the organization. The charity would have to agree to assume the on-going premium obligations, but if the death benefit is large enough, the charity may be willing to do so. The policy would have to be independently valued to determine its fair market value ("FMV") and the amount of the donation tax credit you would receive. The situations that make the most sense (and have the highest FMVs) are typically where the insured is 70 years of age or older and/or has experienced health problems since the policy was issued.

	Transfer Policy	**Donate Through Will**
Timing of Donation Tax Credit	Immediately	Available on the death of the insured
Amount the Donation Tax Credit is Based	Appraised FMV of policy (usually higher than CSV)	Benefit received by charity upon death
Availability for Donation Tax Credits if Premiums Continued to be Paid by Donor	Yes. If the donor no longer wants to continue to pay the premiums, the charity must be willing to pay (or the premiums can be paid out of the CSV, if available); otherwise the policy may lapse	Not Applicable

Scenario 2

You own a permanent life insurance policy and have decided you no longer have a need for it. You can cancel the policy and you would receive the cash surrender value ("CSV"), if any. Alternatively, you could name a charity as the recipient of the insurance proceeds in your will. This would allow you to leave a legacy and donate an amount to a cause you care about. In addition, your estate would receive a donation tax credit when you died which could be used to lower the taxes on death. This strategy remains flexible during your lifetime should you change your mind or your family's financial situation changes.

Insurance Held in a Corporation

It may also be beneficial to donate a corporate-owned life insurance policy if that entity is being sold/wound-up/reorganized, there is no longer a need for insurance and there would otherwise be a significant tax liability owed on its disposition to a shareholder or another corporation.

General Tips

• Ensure that the charity is a qualifying donee that can issue a tax receipt.

• Before donating, confirm whether the charity will accept a life insurance policy as a donation in-kind.

• Donations must be reported in the year they are made; however, if there is no tax in a particular year, they can be carried forward up to five years.

• The maximum donation claim for tax purposes is 75 per cent of the taxpayer's net income. In the year, of death the maximum claim is 100 per cent of the individual's net income.

• Claim all personally-made donations on the income tax return of only one spouse (generally, the higher-income earning spouse).

• The amount of a donation tax receipt will be reduced by the value of any advantage or benefit received from the charity (e.g. gift, meal, etc.).

Consult with your professional advisors to determine if any of these donating options are right for you.

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Tax Debt and Insolvency

According to a recent survey, the average Canadian owes $1.77 for every $1.00 of disposable income. It can be difficult to keep up with all the bill payments for the average Canadian household. One of the most difficult debts to manage are debts owed to the Canada Revenue Agency (the “CRA”).

As a government body with legislative powers, the CRA has many courses of action which it can take to collect a debt that is owed, including:

• Garnishing a debtor’s employment income payment, bank account, accounts or commissions receivable, or pension payment;

• Setting off the debtor’s tax debt against an income tax or GST/HST refund, child tax benefit, etc.;

• Certifying the tax debt in the Federal Court of Canada and registering certificates against the debtor’s home and other real estate property;

• Seizing and selling the debtor’s real estate; and

• Issuing a Notice of Assessment or Re-assessment against a related third party pursuant to Section 160 of the Income Tax Act where fair market value consideration has not been received by the debtor in exchange for property transferred.

Many business owners think that as an individual, the CRA can only go after them for an income tax debt. This is not true. The obligation for HST and payroll source deductions collected but not remitted to the CRA may fall on an individual as a corporate director. If the individual cannot demonstrate that she or he took appropriate steps to satisfy a due diligence defence, the CRA can raise an assessment for these tax liabilities against the individual. The only tax debt that is not subject to potential director’s liability is corporate income taxes. If a debtor feels that a tax debt has been unfairly assessed against him or her, they can:

• File a Notice of Objection with the CRA;

• File an appeal with the Tax Court of Canada; or

• Discuss the matter with a CRA Collections Agent and to try to negotiate a repayment plan.

These options can be time sensitive, requiring action before statutory deadlines are reached, so they should be discussed with a tax accountant or lawyer as soon as an assessment or re-assessment has been issued by the CRA.

If you find yourself in a situation where you are faced with a tax debt and you are unable to pay the obligation or maintain a CRA-approved payment plan, there are options to help you under the Bankruptcy and Insolvency Act (“BIA”).

Unless the CRA has registered a certificate against real estate owned by the tax debtor, tax debts are generally considered to be unsecured, which can be covered under an insolvency filing in accordance with the BIA. There are two types of insolvency filings that may assist with a tax debt:

• **Proposal** - Assets remain in the possession of the debtor and an agreed upon percentage of the total amount of debt is repaid to the debtor’s creditors, including the CRA; and

- **Bankruptcy** - The debtor makes an assignment of his or her property to a trustee for the benefit of the creditors and repayments are determined based on the available monthly net income and the income standards as set out by the Office of the Superintendent of Bankruptcy.

In order to maintain the integrity of the BIA, while at the same time assisting the debtor during the period of financial rehabilitation, there may be court-imposed conditions put in place to discourage multiple filings that are primarily tax debt-related. For example, in situations where a tax debt is greater than $200,000 and represents over 75 per cent of the debtor's total debt, the Bankruptcy Court would likely render a conditional order of payment before it will discharge the debtor from bankruptcy. The courts may impose other restrictions or compliance orders as it deems necessary.

Insolvency can be a scary proposition, but our professionals are here to help. If you would like more information on the Proposal or Bankruptcy process, please contact the Crowe Soberman Insolvency Group for a consultation.

PERSONAL DEBT SOLUTIONS

Insolvency can be a scary proposition, but our professionals are here to help. If you would like more information on the Proposal or Bankruptcy process, contact Crowe Soberman's Insolvency Group for a free consultation.

GST/HST and Fee Sharing Arrangements

Alesia De Marti, CPA Candidate, Intermediate Staff Accountant

On November 7, 2000, the Canada Revenue Agency (the "CRA") issued its *GST/HST Policy Statement, P-238 Application of the GST/HST To Payments Made Between Parties Within a Medical Practice*. In that Policy Statement, the CRA explained that if a medical practitioner or a clinic uses the services of a locum or contracts with an associate whereby the practitioner or clinic withholds and retains a percentage of the OHIP billings or fees, the amount will not be subject to GST/HST if the parties have entered into a bona fide agreement to share fees.

It has been our experience that many professionals working as locums or associates have informal and unwritten fee sharing agreements. In other situations, where a contract or agreement actually exists, many of these agreements are silent on whether the amount retained by the practitioner or clinic represents payment by the locum or associate for the use of the facilities and supplies, or is in exchange for the provision of administrative services.

The concern has been that where an agreement did not address the use of facilities, supplies and administrative services provided by the practitioner or clinic, there was a potential that the CRA could successfully argue any amount kept by the clinic was indeed in exchange for those taxable supplies and the amount would be subject to GST/HST. The CRA was fairly aggressive on this front and we have seen situations where the CRA reassessed practitioners and clinics for GST/HST where the fee sharing arrangements did not exist, or were poorly worded.

The *West Windsor Urgent Care Centre* tax court case, seemed to provide a safer alternative to mitigate the GST/HST risk for parties who wanted to share fees. Modeled on the facts in the case, the locum or associate would invoice the practitioner or clinic directly for medical services provided. These GST/HST exempt medical services would be billed at a rate equal to a percentage of the OHIP billings or fees charged to the patient. These arrangements gave the parties greater confidence that GST/HST would not apply.

Based on a recent GST/HST Technical Interpretation (175346F – only released in French), we may see a shift back to bona fide fee sharing arrangements. In this interpretation, the CRA was asked to provide an opinion whether GST/HST would apply in the following situation:

- A professional corporation (the "PC") entered into a fee sharing arrangement with an independent contractor (the "associate") to perform dental services;
- The dental services were provided to patients of the PC;
- Invoicing was done by the PC;
- The PC would pay the associate 40 per cent of the revenues generated from the treatments performed by him; and
- The contract terms did not include any clause for the supply of property or administrative services by the PC to the associate.

The CRA concluded that the portion of revenues retained by the PC were not subject to GST/HST. It explained that even if the agreement was silent, the contract terms did not permit a conclusion that the amounts withheld represented a taxable supply.

This is a welcomed confirmation that the CRA will not assume taxable supplies, such as the use of facilities and supplies or administrative services, have been provided by a practitioner or clinic to a locum or associate where a bona fide arrangement to share fees has been entered into by the parties and the contract is silent on these matters. Readers are cautioned though that this position is heavily fact-dependent, and they should review their existing agreements for consistency with the facts of the interpretation.

Before relying on this CRA interpretation, it is recommended that a fee sharing arrangement should, at a minimum, specify that:

- The patients are the patients of the practitioner or clinic (this may be very difficult to assert in a medical clinic setting, especially in a Family Health Organization);
- Invoicing or OHIP billing will be done by the practitioner or clinic;
- The contract should be silent on whether the practitioner or clinic is supplying any property or administrative services to the locum or associate or, preferably, that none of the fees retained by the practitioner or clinic are for any property or services provided by the practitioner or clinic; and
- The contract represents a bona fide fee sharing arrangement for tax exempt supplies between the healthcare practitioners.

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Important Tax Deadlines

March 2, 2020

- Filing due date for T4 Summaries and slips for salaries, bonuses, and retiring allowances paid in 2019.
- Filing due date for T5 Summaries and slips for interest and dividends paid by corporations, partnerships and trusts in 2019.
- Last day to make a 2019 RRSP contribution.

March 16, 2020

- Filing due date for Employer Health Tax (EHT) returns for employers with salary and bonuses paid of $450,000 or more in 2019.
- First quarterly installment due for 2020 personal income taxes (if applicable).

March 31, 2020

- 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, 2019.
- Final payment of corporate income taxes due for most corporations with a December 31, 2019 fiscal year end.

April 15, 2020

- 2019 US personal income returns and taxes due for US citizens and green card holders residing in Canada unless an extension is filed.

April 30, 2020

- 2019 Canadian personal income taxes due; personal income tax return filing due date for most Canadian taxpayers.

June 15, 2020

- 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 30, 2020

- Filing due date for corporate income tax returns for professional corporations with a December 31, 2019 fiscal year end.

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