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When a Corporate Tax Return is Filed Late: Ability to Get a Tax Refund

A July 22, 2024 Federal Court case found that CRA's refusal to accept and provide tax refunds for corporate tax returns filed more than three years after the relevant year-end was reasonable. While a specific provision allows CRA to accept requests (at their discretion) for refunds after the three-year deadline for individuals, there is no parallel provision for corporations.

While no tax refund can be provided where corporate tax returns are not filed within three years of the fiscal year-end, CRA has discretion to re-appropriate the refund to another account of the taxpayer (e.g. the taxpayer's GST/HST, payroll, or income tax account). However, this re-appropriation is fully at CRA's discretion, based on factors such as CRA error or delay, natural or man-made disasters, death, accident, serious illness, or emotional or mental distress.

ACTION: Ensure that corporate tax returns are filed in a timely manner to avoid risking the loss of the tax refund.

Trust Distributions: Violating Trust Terms

A March 30, 2023 Tax Court of Canada case reiterated the importance of the trustee of a trust properly understanding the terms of the trust. In this case, the trust had paid \$100,000 to two beneficiaries, both under age 18, from capital gains eligible for the capital gains exemption. However, the terms of the trust prohibited payments to beneficiaries under age 18.

Taxpayer Losses

The Court ruled that amounts paid in violation of the trust terms were not payable for income tax purposes and were therefore neither income to the beneficiaries nor deductible from the trust's income.

ACTION: If acting as a trustee of a trust, ensure to fully understand the terms of the trust to avoid a surprising tax consequence.

Shareholder Purchasing Asset: Input Tax Credit (ITC)

An August 20, 2024 Tax Court of Canada case reviewed whether a corporation could claim ITCs of \$8,874 related to the purchase of two vehicles that were used by the corporation. One vehicle was purchased by the shareholder and the other was purchased by the shareholder and his spouse.

Taxpayer Losses

To be eligible for an ITC, the corporation must meet all of the following conditions:

- a. the corporation must have acquired the vehicles;
- b. the GST/HST in respect of the vehicles must be payable or must have been paid by the corporation; and
- c. the vehicles must have been acquired in the course of the corporation's commercial activities.

The Court found no evidence that the corporation acquired either vehicle; the corporation's name was not on the sales agreements, bill of sales, vehicle registrations or proof of insurance. In addition, there was no evidence of any trust, agency or assignment agreement. As such, criterion (a) was not met.



The Court also found that the corporation was not liable to pay consideration under the purchase agreement for either vehicle; therefore, GST/HST was not payable by the corporation. As such, criterion (b) was not met.

While the corporation argued that the vehicles were used or available for use by the corporation, the vehicles were not actually acquired in the course of the corporation's commercial activities. As such, criterion (c) was not met.

While only failing one of the above criteria would be fatal to the claim, the corporation failed all three. The ITC was appropriately denied

ACTION: Care should be afforded to acquire assets in the proper entity such that GST/HST can be recovered as an input tax credit, if appropriate.

Psychotherapy and Counselling Therapy: Charging GST or HST

As of June 20, 2024, certain psychotherapy and counselling therapy services have become exempt from GST/HST. This means that those providing these exempt services are no longer required to collect GST/HST on their services, and these service providers are no longer able to claim input tax credits (ITCs) on inputs acquired to provide these services.

Psychotherapy and counselling therapy services are now exempt if the provider:

- is licensed with a provincial body responsible for the regulation of psychotherapy services (regulated only in Ontario) or counselling therapy services (regulated only in New Brunswick, Nova Scotia and Prince Edward Island); or
- operates in a province with no regulatory body but has the equivalent qualifications required to meet the licensing requirements in a regulated province.

In addition, to be exempt from GST/HST, those providing the services must do so within the profession's scope of practice in the respective regulated province.

If all of a registrant's services are GST/HST exempt, they may close their GST/HST account with CRA. If only some of their services are exempt, they must keep their account open and continue to charge GST/HST on non-exempt services and goods.

In addition, on June 20, 2024, there may be a deemed sale and repurchase of certain capital property (e.g. computers, furniture) used in the provision of these services due to the change from a taxable to exempt supply. This generally means that the taxpayer will have to repay all or part of the GST/HST they claimed (or were entitled to claim) as an ITC when they bought the property and when they made any improvements to it. The required repayment of GST/HST is adjusted if the assets have declined in value since the acquisition.

ACTION: If psychotherapy or counselling therapy services are provided, consideration should be provided to determine if the supply is now exempt.





A quick point to consider...

Starting in 2024, digital platform operators (such as Airbnb and Etsy) are required to provide information to CRA on the sellers who use their platform, including the seller's identification and details of their financial transactions.

Shareholder Loan Account: Proper Bookkeeping

A July 31, 2024 Tax Court of Canada case reviewed whether payments made by a corporation in 2013 and 2014 of \$24,249 and \$41,680, respectively, were taxable as shareholder benefits on the basis that they were for the personal expenses of the shareholder. The Court also reviewed whether payments of \$13,693 and \$28,131 in 2013 and 2014 were taxable to the shareholder as indirect payments on the basis that they were made on behalf of the shareholder's son for personal mortgage payments and day-to-day expenses. The taxpayer argued that all these payments constituted non-taxable shareholder loan repayments.

Starting in 2001 and continuing over several years, the taxpayer loaned a newly incorporated entity, of which the taxpayer and his spouse were shareholders, over \$600,000. The loans enabled the corporation to acquire and operate a tire/auto detailing business managed by the taxpayer's son. As the corporation could not afford a professional to prepare the corporation's tax returns, the taxpayer compiled the returns, although he had no accounting training other than a personal tax preparation course he took 40 years prior. In 2018, the corporation ceased operations due to financial problems.



Taxpayer loses – shareholder benefit

The Court acknowledged that the taxpayer had made a bona fide loan to the corporation. However, the Court observed that payments the taxpayer received from the corporation were not properly recorded via a debit entry to the shareholder loan account as a repayment of the shareholder loan.

The taxpayer argued that he did not know how to record payments for personal expenses in the shareholder loan account. The Court found that this was not a sufficient reason for not debiting the shareholder loan account for the repayments of the shareholder loan. The Court noted that the choice was to pay for professional assistance for the books and records or learn how to do it properly, neither of which the taxpayer selected. The shareholder benefit income inclusion was upheld.

- the allocations were at the direction or with the concurrence of the reassessed taxpayer (the shareholder);
- the payments were made for the benefit of the reassessed taxpayer (the shareholder) or for the benefit of another person (the son) whom the reassessed taxpayer wished to benefit; and
- the payments would have been included in the reassessed taxpayer's income (the shareholder's income) if they had been received by them.

The taxpayer was, therefore, required to pay tax on the indirect payments benefiting his son.

ACTION: Ensure that all loans to a corporation and associated repayments are properly recorded in the books and records of the corporation.

Taxpayer loses – indirect payment

The Court noted that all of the following conditions were met in respect of payments to or for the benefit of the taxpayer's son:

- the payments were made to a person (the son) other than the reassessed taxpayer (the shareholder);

Withholding on Rent Paid to Non-Residents: Draft Legislation

Under current rules, when rent on Canadian property is paid to a non-resident, 25% of the gross rent must be withheld and remitted to CRA. This could be the case where, for example, a college student pays rent to live in the basement of a house owned by a non-resident. If the non-resident provides an NR6 form, the 25% withholdings are based on the net rent.

Effective August 12, 2024, the Department of Finance released a proposal that would provide an exclusion to this withholding requirement.

Specifically, an individual would not have to withhold tax in respect of an amount paid or credited to a non-resident as rent for the use of a residential property in which an

individual resides (whether or not that individual is the one paying the rent).

In this case, the non-resident person would be required to remit and report the withholding, assuming that an agent of the nonresident was not already required to do so. All rents paid on Canadian real estate to a non-resident that do not fit within the specific terms of this exception would continue to require withholdings and reporting by the tenant.

ACTION: If this proposal is legislated, individuals would no longer be required to withhold amounts in the specific situations covered by this proposal.

Quick points to consider...

Over 2.1 million people have registered for the Canadian Dental Care Plan (CDCP). Almost 12,000 oral health providers have formally registered to provide services to patients under the plan. Providers can now provide services without formally registering, provided they bill Sun Life directly for eligible services.

All GST/HST returns (except for those of charities and selected financial institutions) must now be filed electronically using methods such as NETFILE, internet file transfer through a third-party accounting software, CRA's My Business Account, electronic data interchange (EDI) through a financial institution or TELEFILE through a toll-free phone number.

Registrants who paper file improperly will be charged a penalty.



Employment Expenses: Salary to Spouse

A June 17, 2024 Tax Court of Canada case reviewed a commission salesperson's deduction for remuneration paid to their spouse (L) for general administrative services as a self-employed contractor.

Taxpayer loses

The annual deductions of \$20,000 for services, including arranging appointments with prospective clients (who completed preprinted forms at a kiosk to express interest in a salesperson's products/services), were not supported by a contract or by any documentation such as a log or list of customers contacted. The taxpayer testified that payment was made in the form of joint household expenses that did not directly match the amounts deducted. The taxpayer testified that he left the determination of the amount deducted to his accountant.

The Court agreed that the onus was on the taxpayer to maintain books and records, such as a contract for services or actual payments for those services, to document expenses claimed. His verbal testimony alone was not adequate to support the deductions claimed – they were properly denied.

Employment expenses – regular vs. commission employee

The scope of deductible employment expenses for employees earning commission income is much broader than for noncommission employees. Expenses incurred to earn commission income are deductible provided that they are not specifically prohibited (purchase of capital assets, personal expenses or payments that reduced a taxable employment benefit) and provided that the other standard conditions for deduction are met.

In contrast, only expenses specifically listed as deductible can be deducted against non-commission employment income. For example, a non-commission employee can deduct salaries paid to an assistant only if the employment contract specifically requires them to pay for an assistant; however, no provision would permit a deduction for fees paid to a self-employed assistant.

ACTION: If paying an assistant such that you can earn commission income, ensure to properly pay and retain documentation to support the claim.

New Canada Disability Benefit: Proposed Regulations

Details on the new Canada disability benefit were included in regulations that were released on June 29, 2024. This benefit is intended to provide support to low-income working-age individuals with a disability.

To be eligible for the benefit, the taxpayer would be required to:

- be a resident of Canada (for tax purposes);
- have a valid disability tax credit certificate;
- be between the ages of 18 and 64;
- have filed an income tax return for the previous tax year; and
- be a Canadian citizen, permanent resident, protected person, temporary resident (that lived in Canada for the past 18 months) or registered (or entitled to be registered) under the Indian Act.

The maximum benefit for the July 2025 to June 2026 period would be \$2,400 (\$200 per month), but would be reduced by the following:

- 20% of income above \$23,000 if the beneficiary is single;

- 20% of income above \$32,500 if the beneficiary is married or has a common-law partner; and
- 10% of income above \$32,500 if the beneficiary is married or has a common-law partner and both are eligible.

In addition, the first \$10,000 of work income (\$14,000 for a couple) would be exempt from this calculation. Work income would have the same definition as that used for the Canada workers benefit, which includes income from sources such as employment and self-employment. The maximum benefit amounts would be increased in future years for inflation (based on the consumer price index).

If an application is denied, the taxpayer would have 180 days to apply for reconsideration. If still unsuccessful, the decision could be appealed to the Social Security Tribunal.

ACTION: If the regulations are finalized as proposed, ensure that eligible individuals apply for this new benefit.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

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