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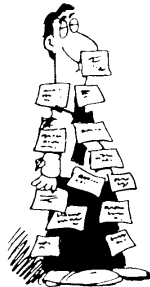
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2002 PERSONAL INCOME TAX RETURN CHECKLIST

61(1)

Appendix A provides a checklist of information that will be needed to complete your 2002 Personal Income Tax Return.



PERSONAL TAX

61(2)

MEDICAL EXPENSE - HOT TUB

In a September 12, 2002 Tax Court case, the taxpayer suffered neck injuries in a motor vehicle accident and was prescribed by a physician to acquire a hot tub to assist with the movement of her upper body, primarily her neck.



CCRA permitted the costs to renovate the house to install the hot tub but did not permit the cost of the hot tub (\$7,500) as a medical expense.

The Court agreed with CCRA and noted that to qualify the hot tub must be to assist in walking where the individual has a mobility impairment. In this case, the primary benefit of the hot tub was improved upper body movement. Therefore, even though CCRA permitted the renovation

costs, the cost of the hot tub itself was not permitted.

MEDICAL EXPENSE - SENIOR CITIZENS' HOME

In an October 7, 2002 Tax Court case, the Court noted that a taxpayer may be eligible for a medical expense for the full-time care in a nursing home.

However, in this case, the Gilmore Gardens was a senior citizens' home, not a nursing home. The Court noted that the taxpayer is entitled to a medical expense only if a qualified person has certified that by reason of a physical or mental handicap the taxpayer requires the "equipment, facilities or personnel specially provided" there for their care.

The Court was impressed that the doctor did provide a letter that specified the taxpayer's ailments. However, the letter was lacking in the particulars of the "equipment, facilities or personnel" required for the taxpayer's care or training. Therefore, the letter did not satisfy the requirements of the Income Tax Act.

Editor's Comment

If the doctor's letter had been specific with respect to the "equipment, facilities or personnel" required, which the institution provided, the \$2,480 per month cost may have been an eligible medical expense.

MEDICAL EXPENSES OUTSIDE CANADA - REIMBURSED

Medical expenses incurred outside Canada, as well as the related travel expenses, may be creditable medical expenses.

Alternatively, these costs may be eligible

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for reimbursement. It was noted in the March 20, 2002 issue of the National Post that the Ontario Hospital Insurance Program (OHIP) must pay Mr. Smith's \$17,000 medical bill incurred when he went to England for prostate cancer surgery. Mr. Smith had waited nine months for treatment and surgery in Ottawa. In a written decision, the Ontario Health Services Review Board ordered OHIP to pay the bills as Mr. Smith risked irreversible tissue damage or death had he waited any longer for surgery in Ontario.

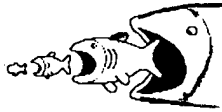
EMPLOYMENT INCOME

Tax Tips & Traps

61(3)

DAMAGES

In a September 11, 2002 *Tax Court*



case, the taxpayer

received from Ontario Hydro \$488,000 for *general damages* and \$388,000 for *pre-judgement interest*, both of which were found to be *non-taxable*. The Court noted that the *general damages* (tort damages) were in respect of the *wrong done* to Dr. A - not in the ultimate loss of his job - but in the stripping of his responsibilities as a nuclear researcher. The breach was in the shift from a responsible researcher to an employee without responsibilities. To be taxable, there must be some *closer tie* between the damages and the *loss of employment*. Also, the *pre-judgement interest* has the character of *damages*, and not a separate "interest" income item.

Taxpayers that are in *legal disputes* with employers should consider this judgement to determine the *fine line* between *taxable* receipts for damages "in respect of loss of employment" and *non-taxable* receipts for general damages.

INVALID T4

In a May 1, 2002 *Tax Court* case, the Court found that the *T4 Slip* given to Mrs. F by her husband's business for \$18,000 should be *taken off* her return because she had never received any employment income.

TRUCKING

A *class-action lawsuit* is proceeding on behalf of truckers, bus drivers and other people who have been using *CCRA's simplified method* of claiming meal allowances of \$11 per meal to a maximum of \$33 at one-half or \$16.50 per day. This is being compared to government workers who received *non-taxable allowances* of \$62.00 per day for their "meal allowance".

Over 1,500 people have sent in their application fee of \$100 by the deadline of *No-*

vember 30, 2002.

See website

www.summerlandlawoffice.com/classaction.html for a five-page discussion.

CAPITAL GAINS AND LOSSES

61(4)

SHARE SALE BY EMPLOYEES

In a November 1, 2002 *Technical Interpretation*, CCRA confirmed that an arm's length employee can sell their shares of the *employer corporation* to a new corporation established by the employer so that the employee receives "capital gain" treatment (which could be tax-free under certain conditions) while the employer is still buying with pre-personal tax dollars.

BUSINESS AND PROPERTY INCOME

61(5)

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

On October 10, 2002, CCRA introduced *Interpretation Bulletin* IT-151R5 which explains SR&ED which, provides a 35% refundable *investment tax credit* to Canadian-controlled private corporations, and a 20% investment tax credit to others.

It was noted in the *March 30, 2002* issue of the *Financial Post* that a study indicates that only 40% of eligible corporations have claimed their SR&ED. This may be because of the *old prejudice* that it is hard to obtain a credit. However, the study notes that the process is now *streamlined* and easier than in the past. Often, CCRA's SR&ED employees will actually *help* with the application.

It was also noted that 12% of eligible com-

panies *did not even know* that SR&ED credits existed.

Editor's Comment

Remember, this is a *valuable credit* and *provinces* - with the possible exception of Alberta and P.E.I. - also provide SR&ED credits.

INTEREST EXPENSE - DEBT CONVERSION - O.K.

In an October 9, 2002 *Technical Interpretation*,

CCRA reviewed a situation where an individual owns an *investment portfolio* with a market value of \$200,000 and has a mortgage of \$100,000 on his personal residence. The individual will *sell \$100,000 of his investments* and use the proceeds to pay off the mortgage. The individual would then re-borrow the \$100,000 and acquire the same or other interests thereby converting non-deductible interest to *deductible interest*.



Caution: Professional help may be needed because of the importance of the documentation, the possible tax implications on the sale of the portfolio, and the various fees that may apply.

CORPORATE TAX

61(6)

PERSONAL SERVICE BUSINESS (PSB)

In a September 13, 2002 *Tax Court* case, the taxpayer was *employed* as the accountant and *chief financial officer* of Clearly Canadian Beverage Corporation (CCBC). However, he also provided *other services* to CCBC through his corporation (S&C). CCRA took the position that the income received by S&C was *PSB* income and, therefore, taxed at *top rates*, rather

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than the very beneficial *small business deduction rate*.

Good News!

The Court found that the income was *not* PSB income and noted that:

1. The consulting fees paid to S&C were for *out-of-the-ordinary duties* that normally consultants would be hired to perform.
2. The employment activities of Mr. Ross *did not* involve these activities.
3. S&C rented the necessary *business tools* from CCBC.
4. S&C incurred *operating costs* which created a risk of loss.

Editor's Comments

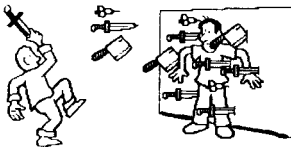
In three cases where CCRA has assessed PSB status against corporations providing services to CCBC, we now have *two winners*, Criterion (the President provided extraordinary services to CCBC), and S&C (the chief financial officer provided extraordinary services to CCBC). The *loser* was the lawyer who provided services to CCBC through his company which were essentially *the same services* as he was required to provide as the employed legal council of CCBC.

CCRA

61(7)

DETAXERS - NAILED AGAIN

The author of the book "The 10 Secrets Revenue Canada



Doesn't Want You to Know" *pleaded guilty* in Saskatoon Provincial Court to charges pertaining to *unfiled 1997, 1998 and 1999 tax years*. The Court ordered him to file the returns as well as fining him \$12,000. The Court noted that, "Respon-

sible citizenship requires that each of us contribute to the government programs instituted by Parliament".

RRSP AND PENSION

61(8)

SELF-DIRECTED RRSPs AND MORTGAGES

In an October 8, 2002 *Technical Interpretation*, CCRA notes that an RRSP may hold a *mortgage on real property* owned by the *annuitant*, or by a non-arm's length person. *Conditions* under which a mortgage may be a qualified investment for an RRSP include following commercial practices regarding *mortgage terms, interest rates and insurance*.

Also, in an October 16, 2002 *Technical Interpretation*, CCRA notes that where a *minority shareholder's RRSP* lends funds to the *employer corporation* as a mortgage in respect of real property *administered* by an *approved lender* under the National Housing Act (NHA), and *insured* under the NHA or by a corporation offering its services to the public in Canada, it may qualify as an *eligible investment* assuming that the individual is dealing at *arm's length* with the corporation.

GUARANTEED INCOME SUPPLEMENTS

It was noted in the *November 13, 2002* issue of the *National Post* that a *class-action suit* has been filed in *Quebec Superior Court* to force the Federal government to pay possibly several billion dollars in retroactive *Guaranteed Income Supplement* benefits to more than 300,000 seniors on the basis that the government was negligent in failing to contact seniors who might qualify for this assistance. The Old Age Security Guaranteed Income Supplement is available to low income pensioners.

Even though the Human Resources Devel-

opment Corporation (HRDC) acknowledged gaps in its notification process, it has generally refused to provide retroactive benefits beyond the *current practice of one year*.

FARMING

61(9)

FARM LOSSES

In a September 17, 2002 *Tax Court* case, the Court *awarded*



costs of \$25,000 against CCRA, in favour of the taxpayer.

The issue in the *Federal Court* was whether this was a *proper awarding of costs*. The Court agreed that it was and noted that the *restriction* to the farm losses against Mr. F should *never have occurred*. Mr. F was clearly a full-time farmer who had to rely on other sources of income to finance the farm - as opposed to the "gentleman" farmer that Section 31 is designed to restrict. The *\$25,000 is a reasonable* amount as this was likely *lower* than the *legal costs* incurred.

The Court noted that the farm depression, which is general public knowledge and surely known to the Government of Canada, should have been considered before this assessment was issued.

MORE GOOD NEWS

In an October 17, 2002 *Federal Court of Appeal* case, the Federal Court overturned the Tax Court and *permitted* Mrs. K a *full farm loss* from her interest in the farming partnership with her husband, rather than the "restricted farm loss".

The Court noted that the taxpayer and her husband, who both had farming backgrounds, operated a farm near Swift Cur-

Tax Tips & Traps

rent, Saskatchewan as a farming partnership. Mr. K worked full-time on the farm while Mrs. K held employment off the farm

the commercial use is greater than 50%.

As a result, the dealer pays GST on the value of the *trade-in* and has to *collect*

T4 SLIPS - GUIDE RC4120

CCRA's new 37-page *Guide RC4120* (Rev-02) addresses the filing of the *T4 Slip* and

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a commentary such as this, a further review should be done. Every effort has been made to ensure the accuracy of the information contained in this commentary. However, because of the nature of the subject, no person or firm involved in the distribution or preparation of this commentary accepts any liability for its contents or use.

as well as working on the farm.

GST

61(10)

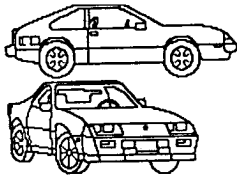
ELECTRONIC COMMERCE

In July, 2002, CCRA released a *Technical Information Bulletin* on the topic of *GST/HST* and *Electronic Commerce* (B-090). The Bulletin includes *many examples* of the application of GST to Internet sales. This is important because it determines whether the sale is subject to the 7% GST.

SALE OF PASSENGER AND MOTOR VEHICLES

CCRA notes that *individuals or partnerships* who are *registered* for GST must collect GST on the value of a *passenger vehicle traded in* which was used 90% or more in commercial activities. Also, a *motor vehicle* traded in, where the motor vehicle has been used greater than 50% in commercial activities, is subject to GST.

Corporations registered for GST must collect GST on the value of *passenger vehicles* or *motor vehicles* traded in where



GST on the full price charged for the vehicle it sells or leases. Both the dealer and the customer may claim an input tax credit for the GST they pay or owe.

When the *customer* is *not required to charge GST*, the dealer charges GST on the *net amount* of the sale or lease. For example, an individual goes to a registered car dealer to trade in his car for a new one. The selling price of the new car is \$25,000, and the dealer allows \$10,000 for the individual's used car. The dealer will charge GST on \$15,000.

DID YOU KNOW...

61(11)

MARRIAGE BREAKDOWN -LEGAL FEES

CCRA notes that they will now consider *legal costs* incurred to *obtain spousal support* under the *Divorce Act* or under the applicable *provincial legislation* in a separation agreement to be *deductible* because it is incurred to enforce a *pre-existing right* to support. CCRA also accepts that legal costs of seeking to obtain child support, an *increase in child support* or make *child support non-taxable* under the Guidelines are also deductible.

These changes will be effective for future assessments and reassessments and will *not apply* retroactively (unless a Notice of Objection was filed and is still outstanding, or can still be filed).

the Summary Form and notes that:

1. In February, 2003 CCRA will start accepting *cancellations and amendments* in *electronic format* for information slips.
2. *T4 Electronic Filing* is an option which allows you to create, save, print, and transmit your electronic T4 information.
3. *Construction businesses* have to report amounts *paid or credited* to construction *subcontractors* on a *T5018*, Summary of Contract Payments, Information Return. The amounts can be filed on either a *calendar or fiscal-year basis* within *six months* from the end of the *reporting period*.

WITHHOLDINGS

A non-resident is *taxable* in Canada on *Canadian-source income*, subject to an override by a relevant *Tax Treaty*.



The *withholding provisions* of the Income Tax Act enable CCRA to *collect the tax* from the *Canadian payor*, who is considered to be CCRA's agent and is *liable for tax, interest and penalties* if he/she fails to withhold and remit.

In a recent case, the taxpayers were *required to withhold* on payments for services rendered in Canada even though the recipient had no Canadian permanent establishment. Penalties were also success-

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fully applied against the Canadian payor.

NATIVE TAX EXEMPTION

In a 172-page March 7, 2002 *Federal Court* - *Trial Division* case, Justice Campbell

found that the *Federal taxation provisions* had *no effect* with respect to *beneficiaries* of *Treaty 8* which was entered into between aboriginals of Northern British Columbia, Alberta, Saskatchewan and the

Southern Northwest Territories.

On November 19, 2002 the *Federal Court of Appeal* commenced the appeal Hearing.

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APPENDIX A

2002 PERSONAL INCOME TAX RETURN CHECKLIST

INFORMATION REQUIRED INCLUDES:

1. All **information slips** such as T3, T4, T4A, T4A(OAS), T4A(4PT), T4A(P), T4E, T4F, T4PS, T4RIF, T4RSP, T5, T10, T2200, T2202, TFA1, T100, T101, T600, T1163, T1164, CTB, TL11A, T5003, T5007, T5008, T5013, T5018 (Subcontractors) and corresponding provincial slips.
2. Details of **other income** for which no T slips have been received such as:
 - other employment income (including stock option plans and Election Form T1212),
 - business income,
 - partnership income,
 - rental income,
 - alimony, separation allowances, child maintenance,
 - pensions,
 - interest income earned but not yet received - example Canada Savings Bonds, Deferred Annuities, Term Deposits, Treasury Bills, Mutual Funds, Strip Bonds, Compound Interest Bonds
 - professional fees,
 - director fees,
 - scholarships, fellowships, bursaries,
 - replacement properties acquired.
3. Details of **other expenses** such as:
 - employment related expenses - Provide Form T2200 "Declaration of Conditions of Employment",
 - tools acquired by apprentice vehicle mechanics,
 - business and employment purchases like vehicles, supplies, etc.,
 - interest on money borrowed to purchase investments,
 - investment counsel fees,
 - moving expenses - including costs of maintaining a vacant former residence,
 - child care expenses,
 - alimony, separation allowances, child maintenance,
 - safety deposit box fees,
 - accounting fees,
 - pension plan contributions,
 - film and video production eligible for tax credit,
 - mining tax credit expenses,
 - business research and development,
 - clergy residence deduction information, including *Form T1223*.
4. Details of **other investments** such as:
 - real estate or oil and gas investments - including financial statements,
 - labour-sponsored funds,
 - Registered Education Savings Plans.

APPENDIX A (continued)

Tax Tips & Traps

5. Details and *receipts* for:
 - Registered Retirement Savings Plan (RRSP) contributions,
 - professional dues,
 - tuition fees - including mandatory ancillary fees, and Forms T2202, TL11A and TL11D,
 - charitable donations (including publicly traded securities),
 - medical expenses (including medical related modifications to new or existing home and travel expenses),
 - political contributions.
6. Details of *capital gains and losses* realized in 2002.
Also, new rules now permit rollovers for foreign share spin-offs and various foreign share reorganizations.
7. Details of previous capital gain exemptions claimed, business investment losses and cumulative net investment loss accounts.
8. Name, address, date of birth, S.I.N., and province of *residence* on December 31, 2002.
9. *Marital/common-law status* and spouse/partner's income, S.I.N. and birth date.
10. List of *dependents* - including their incomes and birth dates.
11. If you or one of your dependents was in full time attendance at a *college or university*, details concerning name of institution, number of months in attendance, tuition fees, income of dependent, Form T2202.
12. Are you *disabled or are any of your dependents* disabled? Provide Form T2201 - disability tax credit certificate. This also includes extensive therapy such as kidney dialysis and certain cystic fibrosis therapy. Also, the *transfer rules* include relatives such as parents, grandparents, child, grandchild, brothers, sisters, aunts, uncles, nephews or nieces.
13. Details regarding residence in a prescribed area which qualifies for the *Isolated Area Deduction*.
14. Information regarding *child tax credit* receipts.
15. Details regarding *RRSP - Home Buyers' Plan* withdrawals and repayments; *RRSP - Lifelong Learning Plan* repayment.
16. Receipts for 2002 income tax *installments* or, payments of tax.
17. Copy of 2001 personal tax *returns*, 2001 Assessment *Notices* and any correspondence from Canada Customs and Revenue Agency (CCRA).
18. 2002 *Personalized Tax information* which CCRA may have sent you.
19. Do you want your *tax refund or credit* deposited directly to your account in a financial institution? Yes/No.
To start direct deposit, or to change banking information, attach a "void" personalized cheque or your branch, institution and account number.
20. Details of *carry forwards* from previous years including losses, donations, forward averaging amounts, registered retirement savings plans.
21. Details of *foreign property* owned at any time in 2002 including cash, stocks, trusts, partnerships, real estate, tangible and intangible property, contingent interests, convertible property, etc..
22. Details of *income* from, or *distributions* to, *foreign entities* such as foreign affiliates and trusts.
23. Details of your "*Pension Adjustment Reversal*" if you ceased employment and were in a Registered Pension Plan or a Deferred Profit Sharing Plan. (T10 Slip)

APPENDIX A (continued)

Tax Tips & Traps

24. If you provided *in-home care* for a *parent or grandparent* (including in-laws) 65 years of age or over, or an infirm *dependent relative*, a federal tax credit may be available.
Also, the caregiver may claim related *training costs* as a medical expense credit.
25. Interest paid on qualifying *student loans* is eligible for a tax credit.
26. Retroactive lump-sum payments
Individuals receiving qualifying retroactive *lump-sum payments* over \$3,000 may be allowed to use a special mechanism to compute the tax.
27. Changes in *family circumstance* that could affect the *Goods and Services Tax Credit*, such as births, deaths, marriages, reaching the age of 19 years, and becoming or ceasing to be a resident in Canada.

Tax Tips & Traps