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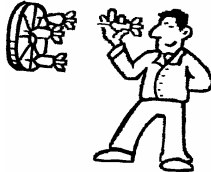
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December 2008

## YEAR-END TAX PLANNING

### 84(1)

Some 2008 year-end tax planning tips include:



1. Certain *expenditures* made by *individuals* by **December 31, 2008** will be eligible for **2008 tax deductions** or **credits** including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union, professional, or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness amounts.

2. You have until **March 2, 2009** to make tax deductible Registered Retirement Savings Plan (**RRSP**) contributions for the 2008 year.

Consider contributing to a *spousal RRSP* to achieve income splitting in the future.

3. If you own a business, consider paying a *reasonable salary* to family members for services rendered to the business.

4. An individual whose **2008 net income** exceeds **\$64,718** will lose all, or part, of their *old age security*.

Senior citizens will begin to lose their income tax *age credit* if net income exceeds **\$31,524**.

Contact your professional advisors for

assistance in *managing* 2008 personal income.

5. Consider purchasing assets eligible for *capital cost allowance* before the year-end.

6. Consider selling capital properties with an *underlying capital loss* prior to the year-end if you had *taxable capital gains* in the *year*, or any of the *preceding three years*. This capital loss may be offset against the capital gains.

7. **Registered Education Savings Plan (RESP)**

A *Canada Education Savings Grant (CESG)* for RESP contributions will be permitted equal to 20% of annual contributions for children (maximum \$500 per child per year).

8. **Health and dental premiums for the self-employed**

*Individuals* will be allowed to *deduct* amounts payable for *Private Health Service Plan* coverage in computing *business income* provided they meet certain criteria.

9. A *refund* of *Employment Insurance* paid for non-arm's length employees *may* be available upon application to CRA.

10. Taxpayers that receive "*eligible*" dividends from private and public corporations will have a significantly lower tax rate on the dividends. *Notification* from the corporation to the shareholder is required. See 84(2) - #2.

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11. Eligible *public transit passes* will be entitled to a tax credit.

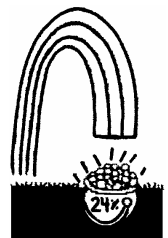
12. A *fitness tax credit* for children under 16 enrolled in certain organized sports is available.

13. A *Registered Disability Savings Plan* may be established for a person who is eligible for the *Disability Tax Credit*. Non-deductible contributions to a *lifetime maximum of \$200,000* are permitted which are eligible for tax-deferred grants and bonds. Please contact your professional advisors for details.

## 2008 REMUNERATION

### 84(2)

Some *general guidelines* to follow in *remunerating the owner* of a *Canadian-controlled private corporation* earning "*active business income*" include:



1. *Bonusing down* active business earn-



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ings in excess of the **annual business limit** may reduce the **overall tax**. However, leaving corporate **active business income** over this amount presents a **tax deferral**.

**Professional advice** is needed in this area.

2. **Notification** must be made to the shareholders when an “**eligible**” **dividend** is paid - usually in the form of a **letter dated** on the date of the **dividend declaration**. If all **shareholders** are **directors**, the **notification** may be made in the **Directors’ Minutes**.

Please contact your **professional advisor** for advice before paying an **eligible** or **ineligible** dividend.

3. Elect to pay out tax-free “**capital dividend account**” dividends.
4. Consider paying dividends to obtain a refund of “**refundable dividend tax on hand**”.
5. Corporate earnings in excess of personal requirements could be left in the company to obtain a **tax deferral**. The effect on the “**Qualified Small Business Corporation**” status should be reviewed before selling the shares.
6. **Dividend income**, as opposed to salaries, will reduce an individual’s **cumulative net investment loss** balance thereby providing greater access to the **capital gain exemption**.
7. Excessive **personal income** affects receipts subject to **clawbacks**, such as **old age security**, the **age credit**, **child tax benefits**, and **GST credits**.
8. Salary payments require **source deductions** to be remitted to the Canada Revenue Agency on a timely basis.
9. Individuals that wish to contribute to the Canada Pension Plan or a Registered Retirement Savings Plan may require a **salary** to create “**earned income**”.
10. **Salaries** paid to family members must

be **reasonable**.

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## BUSINESS/PROPERTY INCOME

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### 84(3)

#### MANUFACTURING AND PROCESSING (M&P) PROPERTY

**M&P property** acquired after **March 18, 2007 and before 2010** will be eligible for enhanced **Capital Cost Allowance** deductions (50% straight-line method).

#### BUILDINGS

An enhanced **Capital Cost Allowance** rate is available for **M&P buildings** (10%), and other **non-residential buildings** (6%).

To qualify, the building must be **brand new**. **Used buildings** are **not eligible**.

#### CHANGE IN USE

In a May 16, 2008 **Tax Court** of Canada case, Mr. and Mrs. Evans operated an **electrical business partnership** in which they **owned a garage** which was used as a workshop and storage facility. The **business** was then turned **over to their sons** who had been working as employees for a number of years. However, Mr. and Mrs. Evans **retained ownership** of the **garage**, which was used by the sons in the business but, **did not charge rent** for the use of the garage.

#### The Problem

The Court found that the **garage was no longer used to earn income** from a business or property by Mr. and Mrs. Evans. Therefore, there was a **change of use** and a **deemed disposition** at fair market value triggering significant **recaptured capital cost allowance**.

The Court noted that **had the sons paid** Mr. and Mrs. Evans **rent** for the property,



this **problem** would **not have occurred**.

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## TERMINAL LOSS UPON THE CESSATION OF A BUSINESS

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In a July 22, 2008 **External Technical Interpretation**, the Canada Revenue Agency (CRA) notes that if a **business is discontinued**, the taxpayer is **not entitled** to claim a **terminal loss** for the undepreciated capital cost of a class of depreciable property **until all the assets** in the class are **disposed of**.

Furthermore, the taxpayer is **not entitled** to **claim capital cost allowance** on the property in any subsequent year unless it is used in that year to earn income from a business or property.

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## MARRIAGE BREAKDOWN

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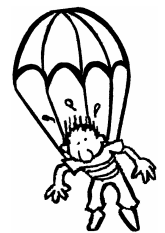
### 84(4)

#### WHOLLY DEPENDENT PERSON

In an April 30, 2008 **Tax Court** of Canada case, the Court confirmed that a divorced person is **not entitled** to a **tax credit** for a **wholly dependent person** if he/she is required to pay a **child support** amount for the person - whether or not they in fact pay the amounts, or it is fair that they should have to pay the amounts.

#### SPOUSAL SUPPORT

In a June 4, 2008 **Alberta Court of Appeal** case, the Judge initially ordered Mr. S to pay **spousal support indefinitely**. However, the **Alberta Court of Appeal** has now **limited** the payments to **eight years** from the date of the marriage breakdown. Mr. S’ lawyer successfully argued that, in some cases, **ongoing spousal support** payments are **not warranted**.



#### CHILD SUPPORT

An **Ontario Court** ordered the father to



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pay **\$1,068 a month** for two teenage sons he had *out of wedlock* and that he barely knows.

The *taxpayer* had *argued* that this would impose "*undue hardship*" on him since he was already supporting children that he had with his wife.

The Court noted that there is *no reason to prefer the children* born within *the marriage* to those born *outside it*. Children in both families should be treated equally.

## ARREARS

*Sometimes*, the payer does *not pay alimony on time*. *Alimony*, like most forms of personal income, is taxable on the *cash basis*. Alimony which is due, but not paid, is neither taxable nor deductible.

When alimony *arrears are paid*, any amount that would have been taxable/deductible spousal support if paid on time is *taxable/deductible* at the *time of payment*. This assumes, however, that the amounts are payable on a periodic basis and are, in fact, paid. Where an agreement is made to pay some different, normally lesser, amount in lieu of arrears, the status of the payment may be lost.

*Consider:* Perhaps a *written agreement* setting out the *expected status* of the *arrears payment* should be prepared. If the payments do not ultimately realize the expected tax status, an adjustment could be made between the parties.

## PRIOR PAYMENTS

Often, spousal support is paid *prior to preparation of a written separation agreement*. As such, the payments are not made under a written agreement and would *generally not* be *taxable* or *deductible*. However, where a *later agreement or order provides* that an amount received and paid previously is to be considered paid and received under the agreement or order, the amounts may be *taxable/deductible*. The payments must have been made in the calendar year of the later order or agree-

ment, or the immediately preceding taxation year. This sets a *deadline on the completion of an agreement* in this regard.

*Consider:* The *agreement* could indicate the *parties' intent* that the amounts will be *deductible* to the payer and *taxable* to the recipient.

## CHILD SUPPORT

The *Federal Child Support Guidelines* are located on the federal Department of Justice website at <http://www.justice.gc.ca/eng/pi/suppen/grl/fcsg-lfpae.html>. Further details on the Federal Child Support Guidelines are also available at <http://www.justice.gc.ca/eng/pi/suppen/index.html>.

The Federal Child Support Guidelines first became effective *May 1, 1997* and resulted in *child support payments not* being subject to *tax* to the *recipient* and *not* being *tax deductible* by the *payor*. The *child support amount* under the *Guidelines* varies by *province* to account for differences in provincial tax rates, cost of living, etc.

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## ESTATE PLANNING

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### 84(5)

#### DONATION SCHEMES

In a February 23, 2007 *Tax Court* of Canada case, the taxpayer received a *donation receipt* for *five times* the amount of the *cash donation*.



#### Taxpayer Loses

CRA *successfully disallowed* the charitable donations, even in *statute-barred years*, and applied *gross negligence penalties*.

Also, in a July 14 2008 *Tax Court* of Can-

ada case, the taxpayers acquired original *works of art* from Canadian Art Advisory Services (CAAS) Inc. and shortly thereafter donated them at much higher values to charities identified by CAAS.

#### Taxpayers Lose

The Court noted that the *value for donation* purposes should be the *amount paid* by the taxpayers *minus* the *15% retainer fee paid* to CAAS.

## REDEEMER FOUNDATION

The *Redeemer Foundation* operates a *forgivable loan program* that finances the education of students at an affiliated college. CRA was concerned that some charitable donations to the Redeemer College were *not valid* alleging that the *donors' contributions* were made solely to finance the *education* of their *own children*. CRA served the Redeemer Foundation with a requirement to report the identity of *each donor* and the name of the *related student*.

On July 31, 2008, the *Supreme Court of Canada* concluded that CRA is entitled to the *donor information*.

We understand that CRA did send Notices of Reassessments to some of the donors.

#### Editor's Comment

This appears to *open up* a charity's *donor list* to CRA, upon request.

## EXECUTORS OF AN ESTATE

In a June 11, 2008 *Tax Court* of Canada case, the issue was whether \$15,000 received for *services* rendered as *Executors* of the uncle's Estate is *taxable* as assessed by CRA.

#### Taxpayers Lose

The *taxpayers' argument* that the amount was a *specific legacy* that their uncle gave them under his *Will*, and not remuneration for services rendered, was *not accepted* by the Court. Given the way in which the *Will was drafted*, the Court found that the



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**\$15,000** constituted taxable income from *employment*.

This is *not* considered to be a *non-taxable legacy* because a *legacy* does not entail any obligation or responsibility of the legatee.

## REGISTERED CHARITIES NEWSLETTER

In the Summer 2008 *Special Edition No. 30*, CRA notes that their Website ([www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)) has a new section "*Operating a Registered Charity*" which includes over 50 pages of information such as checklists, issuing receipts, Form T3010, disbursement quotas, books and records, audits and sanctions, making requests that require approval, policies and technical information, and frequently asked questions.

The *checklists* are available at [www.cra.gc.ca/tx/chrts/chcklsts/menu-eng.html](http://www.cra.gc.ca/tx/chrts/chcklsts/menu-eng.html).

The *question and answer* structure is arranged by *areas of interest* (for example, applying for registration), and then is divided by *subject matter* (for example, issuing receipts), and then subdivided to answer the *specific questions* (for example, information that is required on a receipt).

Also, you could get on the *electronic mailing list* by registering at [www.cra-arc.gc.ca/esrvce-srvce/mlst/sbscrbchrts-eng.html](http://www.cra-arc.gc.ca/esrvce-srvce/mlst/sbscrbchrts-eng.html).

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## GST/HST

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### 84(6)

#### LEGAL FIRM - DISBURSEMENTS

In a June 13, 2008 *Tax Court* of Canada case, *CRA assessed* the law firm as owing **\$77,350** in *GST* on *legal disbursements* which were paid *on behalf of its clients* and which were almost exclusively taken out of the law firm's *Trust funds*.



#### Law Firm Wins!

The evidence established that certain *disbursements* were *not subject to GST*, including appraisal reports, motor vehicle accident reports, courier fees, transcript fees, investigative reports, hospital records, security reports, medical reports, parking fees, travel expenses, security and search certificates, birth certificates, marriage certificates, and death certificates.

Legal disbursements for *office expenses* were subject to GST.

#### CREDIT CARD EXPENSES

CRA allows a *Registrant* who is an employer, partnership, charity or public institution to use *factors* to calculate Input Tax Credits (*ITCs*) in respect of the *tax deemed paid* by employees, partnership members or volunteers where *credit cards* have been used to make purchases.

This is an *administrative policy* of CRA and is not legislated. Some Registrants may prefer to use the *exact calculation* method.

Beginning January 1, 2008, when the rate of *GST/HST* became **5% and 13%**, respectively, the *factor* allowed on credit card expenses became **4/104** or **12/112**.

CRA will *permit Registrants* to use *factors* for calculating ITCs on expenses charged to company credit cards, provided the *conditions* in *CRA Guide P-184* (July 31, 2008) are followed.

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.



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