



# Gaviller & Company LLP

— CHARTERED ACCOUNTANTS —

OVER 50 YEARS OF SERVICE

COLLINGWOOD



MEAFORD



OWEN SOUND



WALKERTON

(705) 445-2020

(519) 538-1690

(519) 376-5850

(519) 881-2100

Volume 13, Issue 2

www.gaviller.com

June 2011

## PERSONAL TAX

94(1)

### CRA LETTER INITIATIVE

CRA will be conducting a **Letter Campaign** in

2011. Two types of letters will be sent to Canadians across the country.



Some will receive a letter providing information about the **eligibility criteria** of certain deductions they have claimed on their recent income tax returns. Others will receive a letter with the same information however, it will also inform them that their income tax returns **may be selected for audit**.

This is the **same** as the **Letter Campaign** that was first commenced in **early 2010**. In 2010 the Letter Campaign involved sending **37,000 letters** to Canadians.

As part of this **second year** of its Campaign, CRA will send **29,000 letters** similar to those sent in 2010. CRA notes that the letter does not mean that the tax returns were incorrect. CRA requests that if the return was not correct that a T1-ADJ be submitted to CRA. CRA notes that the letter recipients were **chosen at random**. For a series of

questions and answers on this, see [cra.gc.ca/whtsnw/tms/ltrcmpgn-eng.html](http://cra.gc.ca/whtsnw/tms/ltrcmpgn-eng.html).

### WORKING INCOME TAX BENEFIT (WITB)

The maximum **WITB for 2010** is **\$931** for **single** individuals with no eligible dependents, or **\$1,690** for individuals with an eligible **spouse** or at least one eligible **dependent**.

The **WITB** is a **refundable tax credit** available to eligible **working low-income individuals**. You could claim the WITB in 2010 if your working income is **over \$3,000** and you meet the **eligible criteria**.

You are **eligible** for the WITB in 2010 if:

- you are **19 years** of age or older on December 31, 2010; and
- you are a **resident** of Canada.

However, if you are **under 19** years of age, you may still claim the WITB if you have a **spouse** or common-law partner or an **eligible dependent** on December 31, 2010.

You are **not eligible** for the WITB if you are enrolled as a **full-time student** at a designated educational institution for more than 13 weeks in 2010 **and** you do not have an eligible

## IN THIS ISSUE

- PERSONAL TAX
- EMPLOYMENT INCOME
- BUSINESS/PROPERTY INCOME
- OWNER-MANAGER REMUNERATION
- ESTATE PLANNING
- FARMING
- RELATIONSHIP BREAKDOWN
- GST/HST

dependent. To claim the WITB, you complete Schedule 6 of the T1 Personal Tax Return.

**Working income** is income from **employment and business**.

Also, eligible individuals have the option to apply for **WITB advance payments** to a maximum of 50% of the expected claim on your 2011 tax return.

The 2010 adjusted **family net income levels** if you had **neither** an eligible **spouse** nor an eligible **dependent** is less than **\$16,770**. If you had an eligible **spouse** or an eligible **dependent**, it is less than **\$25,854**.

If you qualify for the **disability supplement** and you do **not** have a



Gaviller & Company LLP

**Tax Tips & Traps**

**spouse or dependent**, the net income level is **\$19,867**. If you had a **spouse** or an eligible **dependent**, it is **\$28,954**. However, if **both spouses** are **disabled** the net income level is **\$32,054**.

For more details see CRA **Guide RC4227**.

These amounts **vary** for residents of Alberta, British Columbia, Nunavut and Quebec.

#### **MEDICAL EXPENSE - IN-VITRO FERTILIZATION**

In a March 9, 2011 **Technical Interpretation**, CRA notes that the cost of **in-vitro fertilization** **qualifies** as a **medical expense**, as do the **related travel costs**, as long as certain criteria are met.

#### **MEDICAL EXPENSE - SLEEP EVALUATION STUDY**

In a March 9, 2011 **Technical Interpretation**, CRA notes that a **sleep evaluation study** meets the **medical expense** conditions which includes diagnostic procedures for maintaining health.

---

### **EMPLOYMENT INCOME**

---

94(2)

#### **SOCIAL EVENTS**

In an October 8, 2010 **Technical Interpretation**, CRA notes that where an **employer** provides free of charge to **all employees**, a **party** or other **social event**, there is **no taxable benefit** if the **cost per employee** does not exceed **\$100**. This limit is **per occurrence**. More than one event per year may be offered by the employer if it is



**reasonable** in the circumstances.

Where the event is offered to all **employees** and their **spouses**, the average cost of **\$100** is calculated based on the **total number of guests** and not only by the number of employees.

The \$100 is an average based on the total amount paid by the employer for the reception or social event, including room rental, food and entertainment expenses. Thus, it is necessary to include the **GST/HST paid** by the employer in calculating the average cost of the evening.

**Additional costs** such as transportation home, taxi fare, and overnight accommodation are **not included** in the \$100 per person. If the cost is **greater** than **\$100** per person, the **entire** amount, including the **additional costs**, is a **taxable benefit**.

#### **SETTLEMENT - GENERAL DAMAGES**

In a March 15, 2011 **Technical Interpretation**, CRA notes that where general damages are received in respect of **personal injuries** sustained before or after the loss of employment (for example, in situations of harassment during employment or defamation after dismissal), or where a loss of employment involves a **human rights violation**, the general damages will be viewed as unrelated to the loss of employment and, therefore, **non-taxable**.

However, it must be clearly demonstrated that the damages received relate to events or actions **separate from** the loss of **employment**. In the case of damages received for a **human**

**rights violation**, only a **reasonable amount**, determined by reference to the maximum amount that would be awarded under the particular human rights legislation and the evidence presented in the case, would qualify as **non-taxable**.

---

### **BUSINESS/PROPERTY INCOME**

---

94(3)

#### **SALARY TO A SPOUSE**

In a March 14, 2011 **Tax Court of Canada** case, the **issue** was whether CRA was correct in denying the Appellant's **deduction for a salary** to his **spouse** against his Proprietorship income in 2005 of \$9,200.



#### **Taxpayer Wins!**

The Court noted that:

1. In 2005 the Appellant **needed additional help** in his Proprietorship and he retained his spouse who has a Bachelor of Science Degree from the University of Windsor in Honours Electrical Engineering/Computer Option.
2. The Appellant stated that his **spouse** supervised the installation and implementation and debugging of a particular hardware at the customer's site. The project lasted for about four months.
3. The Court concluded that it was more likely than not that the taxpayer did retain services of his spouse in 2005 and that **she earned** the \$9,200 paid for those services.



Gaviller & Company LLP

**Tax Tips & Traps**

---

## OWNER - MANAGER REMUNERATION

---

94(4)

### DIRECTOR LIABILITY FOR GST/HST

In a February 8, 2011 **Tax Court of Canada** case, the taxpayer was a **director** of a corporation which had **not remitted its GST**. Therefore, he was **personally** liable, and paid **\$57,202** and incurred legal fees of **\$3,196** in defending himself.

#### Taxpayer Loses - Again!

The Court found that the **payment** for the GST on behalf of the company was **not a deductible expense** and, the **legal expenses** were also **not deductible**. Legal fees paid in relation to an Objection or Appeal under the **Excise Tax Act** are **not deductible** whereas, **legal fees** to object under the **Income Tax Act** are **deductible**.

However, legal fees to contest a **GST Assessment** may be deductible under ordinary business principles if the taxpayer is **carrying on a business**. In this case, he was not. Therefore the legal fees with respect to the GST were not deductible in computing business income.

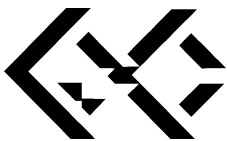
The payment for the **director's liability** is **not deductible** because it is **not incurred to earn income**.

**Legal fees** with respect to **GST** may also be deductible as an amount paid in making a **representation** relating to a **business** carried on by the taxpayer. However, in this case, the taxpayer was **not carrying on a business**.

---

## EMPLOYMENT INSURANCE (EI)

---



Gaviller & Company LLP

**Tax Tips & Traps**

In a January 20, 2011 **Tax Court of Canada** case, **CRA** took the position that the salary paid to Dion (the **son of the shareholders** of the corporation) was **subject to EI** on the basis that his terms and conditions of employment were **roughly similar** to those that would have occurred if there was an **arm's-length relationship**.

#### Taxpayer Wins!

The Court noted that the **exception for EI** under the Employment Insurance Act was **met** on the basis that:



1. **Dion** had much **more freedom** with regard to working hours than an arm's-length shop supervisor would have had.
2. He was **paid for periods** during which **he took off** and he provided **substantial assistance** for questions related to the **operations** of the company.
3. Even if nothing is cast in concrete, Dion and his parents had agreed that in a few years **he would purchase** the company from his parents when they retired.
4. It would **not be reasonable** to conclude that the terms of employment were **roughly similar** to those that would have occurred if there was an arm's-length situation.
5. It was clear that his **relationship** with the company was **very different** from what **CRA had assumed**.

Editor's Comment

It is **important** on the **initial enquiry** by CRA that the **proper information** is provided to CRA so that they may make a **proper decision** without the taxpayer having to file an Appeal to the Tax Court before receiving an equitable result.

---

## ESTATE PLANNING

---

94(5)

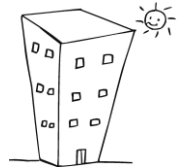
### FIRST-TIME HOMEBUYERS

**First-time homebuyers** have a number of **incentives** including:

1. **Non-**

**Refundable  
Tax Credit**

The Income Tax Act provides a non-refundable



tax credit based on \$5,000 (at 15% = \$750) for "**first-time homebuyers** who acquire a **qualifying home**" after **January 27, 2009**.

An individual will be considered a "**first-time homebuyer**" if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the **four preceding** calendar years.

The credit is also available for certain acquisitions of a home for the benefit of an individual who is eligible for the **disability tax credit**.

Any **unused portion** of the tax credit may be claimed by the individual's **spouse or common-law partner**. Where more than one individual is

entitled to the tax credit (for example, where two individuals jointly buy a home), only **one credit** is allowed.

## 2. RRSP Homebuyers' Plan (HBP)

This **HBP** permits each **spouse** to withdraw up to **\$25,000** from his/her **RRSP** (**\$50,000 per couple**) if you or your spouse has **not owned** an **owner-occupied home** in the period beginning with the start of the **fourth calendar year before** the year in which you acquired the new home and ending **thirty-one days before** the acquisition of the new home. The thirty-one day rule allows a person to acquire the new home up to thirty days before the withdrawal. However, this condition is **not applicable** if the person is **disabled** or if you are purchasing a home for a disabled person.

The home must be purchased by **October 1** of the year after the year the amount was withdrawn. You must intend to occupy the home as your **principal residence** within one year of acquiring it. However, once you live in the home as a principal residence, there is no minimum period of time that you have to live there.

You must repay the loan with a minimum of **1/15th per year** for up to fifteen years.

In a June 18, 2010 **Technical Interpretation**, CRA notes that a **mobile home** on leased land may be considered a "**qualifying property**" for

purposes of the **HBP** assuming all other conditions are met.

## 3. Land Transfer Tax Exemption

Some provinces (for example, Ontario and British Columbia) have a **limited** exemption for **land transfer tax** for first-time homebuyers.

Another thing to consider is that a parent or grandparent may make a **non-interest bearing loan** to a child, for example, to assist the child in acquiring a personal asset such as a residence or a car. This avoids the **non-deductible interest expense** to the child. As there is no income earned on these personal assets, the **attribution rules** are **not applicable**.

If the loan is not repaid at the time of the parent's **death**, the Will could **forgive** that part of the loan. The "**debt forgiveness**" rules in the Income Tax Act **do not apply** to a bequest or inheritance.

Also, a **gift** to an adult child does **not** trigger the attribution rules.

## ROLLOVER TO REGISTERED DISABILITY SAVINGS PLAN (RDSP)

The Income Tax Act provides rules to allow the tax-deferred transfer (**rollover**) to a **RDSP** of certain amounts received from a **RRSP**, **RRIF** or Registered Pension Plan (**RPP**) as a consequence of the **death** of the annuitant or RPP Plan member.

To qualify for this rollover, the **beneficiary** of the **RDSP** must be a **child or grandchild** of the deceased, and have been **financially dependent** on the deceased by

reason of **infirmity**. A qualifying beneficiary is referred to as an "**eligible individual**". **Transitional rules** also provide access to the **rollover** in situations where the **deaths** of the RRSP or RRIF annuitant or RPP member occurred in **2008, 2009 or 2010**.

This applies after **March 3, 2010**. However, "**Specified RDSP Payments**" cannot be made until after **June 2011**.

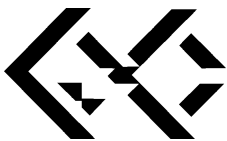
## 2012 CANADA PENSION PLAN

In a February 20, 2011 Release, Service Canada mentioned that **starting in 2012**:

- If you are **under age 65** and you **work in Canada** while receiving your CPP retirement pension, you and your employer will **have to make CPP** contributions.
- Between the **ages of 65 and 70**, you can **either chose** to make contributions or opt out. If you chose to make contributions, your employer will also have to contribute.
- These contributions will **increase** your **CPP retirement benefit** through the post-retirement benefit.

If you are an employee or self-employed person who has contributed to the CPP and are thinking about retirement:

- Starting in **January, 2011**, your monthly **CPP retirement** pension will increase by a larger percentage if taken **after age 65**.
- If you start receiving your monthly CPP retirement pension in **January 2012** or later:



- your monthly benefit amount will **decrease by a larger percentage** if taken before **age 65**;
- you can take your **CPP retirement pension** without any work interruption; and
- a longer period of **low or zero earnings** may be automatically **dropped** from the calculation of your pension.

### TAX FREE SAVINGS ACCOUNTS (TFSAs)

In a January 11, 2011 **CRA Newswire Release**, CRA notes that if a person contributed to a TFSA \$5,000 in 2009 and only \$2,000 in 2010, then you could contribute \$8,000 in 2011. This includes the \$3,000 unused contribution room from 2010 plus \$5,000 for 2011.

In another example, CRA notes that if you contributed \$5,000 in both 2009 and 2010 and then withdrew \$10,000 in November 2010, your contribution room for 2011 would be \$15,000. This is calculated using your annual dollar limit of \$5,000 for 2011 plus the \$10,000 withdrawal made in 2010. **Withdrawals are not added back** to your **contribution room until after the end** of the year.

#### Caution!

CRA also notes that if you have more than one TFSA, you can transfer funds **directly** from one of your **TFSAs** to another of your **TFSAs without affecting** your contribution room. The direct transfer **must** be completed by your financial institutions.

However, if you **withdraw funds** on

your own from one TFSA and **contribute** those same funds to **another TFSA**, the **re-contribution** will be considered to be a **new contribution**. As a result, your **TFSA contribution room** will be affected and you may be subject to a **tax on excess contributions**.

If your contributions in a year exceed your TFSA contribution room, you will be subject to the TFSA tax on excess contributions of **1% per month** on your highest excess TFSA amount in each month. This tax will accumulate until the excess amount is withdrawn.

### FLOW-THROUGH SHARES

An investor who acquires **flow-through shares** of a corporation, usually involved in **mining or oil exploration**, may be entitled to receive up to a **100% deduction** for the exploration costs through a flow-through from the corporation. If, for example, the entire cost of the investment is passed on through tax deductions, the **adjusted cost base** of the investment would be **nil**.

If the shares are **publicly traded securities**, a **donation** to a charity will result in a **charitable donation credit** equal to the **fair market value** of the donation and, the resulting **capital gain** will be considered to be **nil**.

### CHARITABLE DONATION SCHEMES

In a March 3, 2011 **Federal Court of Appeal** case, the Federal Court confirmed the Tax Court decision that the taxpayer was **not entitled** to claim **any charitable tax credit** for money which had been **“donated”** to the National Foundation for Christian Leadership (NFCL).

Under this Program, nearly all students who solicited the **“donations” received bursaries** for the expenses related to their education at Christian post-secondary institutions equal to approximately 80% of the lesser of the students’ expenses and the funds that they had solicited.

The Federal Court found the Appellants had received a **benefit** from their **“donations”** to NFCL because the student-recipients benefited from the bursaries.

The Court noted that a gift must be a **gratuitous** transfer of property for which **no benefit** flows to the donor.

---

## FARMING

---

94(6)

### CASH PURCHASE TICKETS

In an October 22, 2010

#### Technical

**Interpretation**, CRA discusses the **tax implications** for farmers



who receive **“cash purchase tickets”** in respect of the delivery of grain to a primary or a process elevator.

The general rule is that the **“cash basis”** farmer is required to include in **income** the **value** of a **cash purchase ticket** that is received in satisfaction of an income debt in the **taxation year** in which it is **received**.

However, the Income Tax Act provides an **exception** to the general rule where:

- the cash purchase ticket issued by the primary or process elevator is for the **sale of grain**



Gaviller & Company LLP

**Tax Tips & Traps**

(wheat, oats, barley, rye, flaxseed and rapeseed), produced in **designated areas**; and

- the holder of the cash purchase ticket is entitled to **payment** by the elevator operator of the amount stated therein, without interest, at a date that is **after** the end of the **taxation year** in which the grain is delivered.

Under these conditions, the farmer includes the amount in the immediately **following** taxation year.

CRA also notes that this deferred grain ticket is **not** considered to be “**inventory**”. Accordingly, neither the **optional inventory adjustment** nor the **mandatory inventory adjustment** rules apply to a **cash basis** farmer holding a **deferred cash purchase ticket** issued to that farmer at the end of a taxation year.

---

## RELATIONSHIP BREAKDOWN

---

94(7)

### COMMON-LAW BREAKDOWNS

In February, 2011, the **Supreme Court** of Canada ruled in two cases from **Ontario** and **British Columbia** that in a **breakdown** of a **common-law relationship**, each of the persons should be entitled to fair compensation from the other person for making sacrifices such as giving up a career in support of a partner when entering into a common-law relationship.



The Court noted that where both persons were together for the

common good with each making extensive, but different, contributions to the welfare of the other and as a result having accumulated assets, the **money remedy** for **unjust enrichment** should reflect that reality.

The money remedy should treat the claimant as a **co-venturer**, not as the hired help.

The **Ontario** case was related to an Ottawa couple, who had two children and lived together for twelve years before separating.

The Supreme Court found that Ms. Vanasse should get \$1 million in compensation as her portion of the wealth for the period when she gave up her job, moved to Halifax and stayed at home to take care of their two children. Mr. Seguin’s business was eventually sold for \$11 million.

The Court also awarded Ms. Vanasse legal costs for the lengthy battle.

The Court emphasized that a Partner who has contributed substantially to a business, property or another success of the other’s career, should benefit commensurate with that contribution.

This decision pertains only to **common-law couples** as asset divisions in **marital separations** are governed by a **strict formula**.

The **British Columbia** case involved a couple who lived together for twenty-five years. Both persons worked for most of the time and contributed to their common good in a variety of ways. Ms. Kerr successfully claimed a share of property that was in Mr. Baranow’s

name claiming that he would be “**unjustly enriched**” if he was permitted to keep most of the share of the asset.

## RETROACTIVE SPOUSAL SUPPORT

In a March 18, 2011 **Technical Interpretation**, CRA notes that the \$18,750 **lump-sum payment** paid to the wife is **not deductible nor** should it be included in the **income** of the wife on the basis that the **\$18,750 is not** for amounts that were **payable** on a **periodic basis**.

---

## GST/HST

---

94(8)

### GST/HST PLACE OF SUPPLY RULES

Clients often ask which sales tax, **GST or HST**, will **apply** in a particular situation. To answer them, we look to the GST/HST “**place of supply**” rules. While these rules can get very complex, the best place to start is to look at the most **basic rules** for sales of **goods** and/or **services**.



For the **sale of tangible personal property** (“**TPP**”), the **general rule** is that a **supply** takes place in the province to which the vendor **delivers** the TPP, or where the vendor makes the TPP available to the purchaser.

If the vendor ships the TPP to a province on a **common carrier** that it has arranged itself, the destination province is the place of supply. But if the vendor ships the TPP to a province on a common carrier that the purchaser has arranged, the



Gaviller & Company LLP

**Tax Tips & Traps**

province where possession of the TPP is given to the common carrier is the place of supply.

Also, if a vendor sends the TPP via **mail or courier** to an address in a province, it is that province that is the place of supply.

This is why we often say that both **GST and HST** are “**destination-based**” taxes, and why it is important to determine that destination.

For a **supply of a service**, the general rule is that a supply takes place in the province noted in the

**customer’s address**. In many ways, it will **not matter where** the service provider is located - the place of supply will be the **province** in the **purchaser’s address**.

**Complexities** arise if you have **more than one address** for a customer (such as a head office address as well as a branch office address), or if the service is performed in more than one province.

Keep in mind that the GST/HST place of supply rules are **not integrated** with **provincial sales tax rules**. It is possible that **both**

**GST/HST and PST** can apply to some services!

Remember...these are the most basic “**general**” rules for sales of **goods** and supplies of **services**. There are many scenarios that will fall outside the general rules. For a detailed discussion of these, look to CRA’s **Technical Information Bulletin B-103**, “*Harmonized Sales Tax – Place of supply rules for determining whether a supply is made in a province*”.

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.

Although every reasonable effort has been made to ensure the accuracy of the information contained in this newsletter, no individual or organization involved in either the preparation or distribution of this letter accepts any contractual, tortious, or any other form of liability for its contents.

For any questions... give us a call.



Gaviller & Company LLP

**Tax Tips & Traps**