

The Tax Break

CRA ANNOUNCEMENTS



PRESCRIBED INTEREST RATES

CRA's prescribed interest rates are set under Regulation 4301(a). The rate is based on the arithmetic mean of the three month **Treasury Bills** sold in a specified month and is then rounded to the next higher whole percentage. For the fourth quarter of 2013, the specified month was July and the average interest rate was 1.01%.

CRA has not yet announced the fourth quarter prescribed rate, which is typically announced in the last month of the prior quarter, but it is expected that the prescribed interest rate for loans for the fourth quarter of 2013 will rise from 1% (the rate since April 2009) to **2% effective October 1, 2013**.

FORM T1135 CHANGES

On June 25, 2013, CRA released the **new version** of Form T1135, the Foreign Property Disclosure Form. In contrast to the prior versions, while the same items are considered Specified Foreign Property, the level

and specificity of disclosure has changed. The name/description of the **property, related country, maximum cost in the year, cost at year end, income, and capital gain/loss for "each particular property that was held at any time during the year"** need to be reported. These details must be disclosed in tabular form within the appropriate category section (funds held outside of Canada, shares of non-resident corporations, indebtedness owed by non-resident, interest in Non-Resident Trusts, real property outside Canada, and other property outside Canada). This appears to indicate each specific security must be separately detailed.

We will be in touch with any of our clients who have filed this form before closer to their deadlines.



ESTATE MATTERS

EXECUTOR FEES

In an October 30, 2012 Technical Interpretation, CRA indicated that

fees for administration of an Estate are either **business or employment income**, depending on whether the activity is carried out in the course of a business.

For **business income**, CRA noted that although a **T4A slip** is technically required, "Until such time as the CRA undertakes a review for the purposes of clarifying the types of fees for services that are to be reported on the T4A slip, taxpayers **will not be penalized** for failing to complete **Box 048** on the T4A slip."

Employment income would require issuing **T4 slips** and withholding **tax and CPP**. CRA noted that "an Executor would be in tenure of office and, as such, his earnings would not be insurable," so **no EI** withholding would be required.

TRUSTS - ADDING A BENEFICIARY

In a November 20, 2008 Technical Interpretation, CRA discussed whether the additions of beneficiaries to a Discretionary Trust would trigger a disposition to the Trust of its assets or a disposition to any existing beneficiary of all, or part, of an interest in the Trust.

In this particular situation, **no** *see over...*

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AUTUMN REFLECTIONS

As the leaves change colour and the days get cooler, we reflect on the changes our firm has made over the past few months. Not only have we updated our website and logo, but we are now in the process of hiring a new staff accountant. All of our current staff have been with us for many years and we believe this is a reflection of the positive and friendly environment our firm offers. But as our client base grows, so must our staff. We hope to announce a new PEL team member in our next newsletter!

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variation to the Trust was needed to add the new beneficiaries, so CRA indicated there would be **no disposition** by, or resettlement of, the Trust. While CRA notes that the existing beneficiaries may be considered to have disposed of partial interest in the Trust, they also noted that there would be **no proceeds of disposition** to the beneficiaries based on the facts provided. CRA also notes that their findings were based on the specific acts of the case.



PERSONAL TAX

DISABILITY TAX CREDIT – “CAN’T FIND WORK” IS NOT ENOUGH

In an April 30, 2013 Tax Court of Canada case at issue was whether disabilities which make it **difficult to find work** enable one to qualify for the **Disability Tax Credit**.

The taxpayer was blind in one eye and had various other issues in the other eye, however, was still able to see. The Appellant noted that he felt restricted in **finding employment**.

In order for an individual to be eligible for the credit, he or she must be **markedly restricted** in at least one **basic activity of daily living** or be **blind**. These activities are described in ITA Paragraph 118.4(1)(c) as meaning the following:

- i. **Mental functions** necessary for everyday life;
- ii. **Feeding** oneself or **dress**ing oneself;
- iii. **Speaking** so as to be understood;
- iv. **Hearing** so as to understand;

v. **Eliminating** (bowel or bladder function); and

vi. **Walking**.

Taxpayer Loses

The court noted that **working was not included** in the definition and was specifically excluded in Paragraph 118.4(1)(d). Therefore, the individual was **not considered markedly restricted** in a basic activity of daily living. As well, although he had vision impairments, he was not blind – he could read and had a driving licence.

MOVING EXPENSES – SPOUSE

In an April 23, 2013 Technical Interpretation, the eligibility to **claim a spouse’s moving expenses** was discussed.

CRA noted that **flexibility was allowed** with regards to a taxpayer claiming travel expenses for a spouse or common-law partner. It was also noted that flexibility would be allowed if a marriage occurred after the date of the move and before the end of the taxation year.

CAPITAL GAINS/LOSSES – PRINCIPAL RESIDENCE EXEMPTION

In a February 19, 2013 Technical Interpretation, CRA noted that the taxpayer owned **two strata units** for an overlapping period and the units were attached and occupied as a place of residence for the taxpayers and their children.

However, the two units were likely **not integrated** in such a manner that they could constitute **one housing unit**. Therefore, the **principal residence exemption** could be claimed on the sale of only one of the housing units.

The fact that the properties were **sold separately** to different purchasers

suggests that the properties were **not integrated** to function as one unit.



TAX DISPUTE TIPS

Following are some practical tips for the handling of tax disputes:

1. Take pro-active steps, including:
 - Meet with the auditor to obtain confirmation of the issues and the years under audit;
 - Have one person manage the request for information;
 - Get CRA to provide all information requested in writing;
 - Maintain a log of dates that information is requested/provided; and
 - Respond to all information requests in writing and keep copies of material submitted to CRA.
2. Provide a detailed response to audit proposal letters and consider involving the CRA Audit Team leader in respect of contentious items. Consider referring more complicated issues to CRA Headquarters for an opinion.
3. Review the Notice of Re-assessment carefully, including CRA Form T7WC. Obtain the Audit Report (CRA Form T20) and consider making a request under the Access to Information Act or Freedom of Information Act to obtain additional information.
4. Consider paying amounts assessed to avoid the non-deductible interest charge if the taxpayer’s challenge to the assessment is not successful.

We recommend that you obtain professional advice before acting on information contained in this newsletter.

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