4th QUARTER **2016**

The PEL Tax Break

PROPERTY BETWEEN FAMILY?

TRANSFERS OF PROPERTY TO A FAMILY MEMBER – IS IT TAXABLE?

When transferring the **legal title** of a property to a family member, a disposition for tax purposes may not necessarily occur. The taxable event would **occur** when a **"beneficial ownership"** change happens. Usually, a beneficial change and legal change are one in the same, but not always.

In a June 14, 2016 **Technical Interpretation**, CRA examined the situation where a married couple **transferred the title to a property and mortgage** into a parent's name because they **no longer qualified to refinance** the original mortgage. Once their financial position improved, they **transferred the title back**. The original taxpayers continued to **make all mortgage** payments and other house costs. They also **continued to live** in the dwelling throughout the legal transitions.

The CRA opined that despite the legal ownership changes, **no beneficial ownership change occurred**. Therefore, there was **no taxable disposition**.

Since the taxability of such a transaction is a matter of interpretation, caution should be taken when relying on such a position. Discuss your fact pattern with a professional and be sure to document appropriate support.

BENEFITS PAID TO SHAREHOLDER EMPLOYEES

ARE THEY TAXABLE?

The CRA is aware that owner-managers have an **incentive to receive benefits deductible** by their corporation which are **non-taxable to the owner**. In essence, this can be perceived as a method to extract

profits out of a corporation without paying tax on it. As such, CRA is particularly vigilant to ensure that these benefits comply with the Income Tax Act and do not confer **unfair advantages on owners**.

To start off, it must be established whether the **benefits or allowances** have been **conferred** on the individual in their **capacity as an employee or** in their capacity as a **shareholder**. Unless the particular facts establish otherwise, **CRA presumes** that an employee-shareholder receives a benefit or an allowance in their **capacity as a shareholder** (assuming the individual can significantly influence business policy). This presumption **may not apply if**:

- the benefit or allowance is **available to all employees** of the corporation; or

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SEASON'S GREETINGS!

The PEL team wishes all of you a **Happy Holiday Season** and all the best for 2017! May the joy of the season be shared by all. In lieu of Christmas cards, we have made a donation to **Covenant House**.

We wish to express our appreciation for your support over the years and to thank you for your many referrals of friends, family and associates. We will do our best to continue to earn your confidence!

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(continued) This presumption **may not apply if:**

- all of the employees are shareholders or individuals related to a shareholder, and the benefit or allowance is **comparable** (in nature and amount) to benefits and allowances generally offered to non-shareholder employees of **similar-sized businesses**, who perform **similar services** and have **similar responsibilities**.

If the benefit or allowance is received in their **capacity as an employee**, the federal income tax treatment is the **same as** for an **unrelated employee**. This means that the benefit is generally **deductible to the corporation and, under certain special circumstances, not taxable to the employee**.

Where an employee-shareholder receives a benefit or an allowance in their **capacity as a shareholder**, the value of the benefit or allowance is **included in the shareholder's income** and **may not be deductible** to the company.

When commencing the provision of non-taxable benefits, consider whether they will also be offered to non-shareholder employees. If not, they may be taxable to the shareholder employee.

MUTUAL FUNDS

CORPORATE CLASS AND SWITCH FUNDS

Mutual fund corporations have often been structured to permit changing funds within the group on a tax-free basis. These are commonly referred to as **"switch funds"** or **"corporate-class funds"**, and have become popular due to the ability to defer accumulated capital gains. Essentially, investors can **switch funds without realizing dispositions** and the related taxable capital gains.

However, **new legislation** has been proposed to **end these deferrals commencing** with exchanges on or after **January 1, 2017**.

Some exceptions exist, including switching between different series in the same class of shares representing the same underlying fund (for example, due to different commission or fee terms) and transactions where the underlying investment is unchanged, but shares are reorganized for other bona fide reasons (for example, changing voting rights or amalgamating funds).

Consider rebalancing switch fund portfolios by December 31, 2016.

DOCUMENTS REQUIRED TO CLAIM U.S. FOREIGN TAX CREDIT

Prior to the summer of 2015, CRA often accepted copies of the **U.S. tax returns**, as support to claim a U.S. Foreign Tax Credit (FTC). The **"Federal Account Transcript"** was selected as alternative evidence that the return provided to CRA was filed and assessed as filed.

Some practitioners report that **obtaining "transcripts"** from the Federal Government, and State Governments in particular, can be onerous, often requiring a request from the client rather than a representative.

Form T2209 Federal Foreign Tax Credits sets out the documents required to support foreign tax credit claims, including **federal, state and municipal tax returns** with all associated schedules and forms, a copy of the **federal account transcript** and an **account statement** or similar document from **state and/or municipal tax authorities**.

CRA recently **changed** its requirements, to accept **proof of payments** made **or refunds** received in lieu of a notice of assessment, transcript, statement or other document from the applicable foreign tax authority (FTA), **provided all of the following information** is clearly indicated:

- that the **payment** was **made to** or received from the **FTA**;
- the **amount** of the payment or refund;
- the **tax year** to which the payment or refund relates; and
- the **date of payment** of receipt.

Request these documents before a CRA pre- or post-assessing review letter is received to expedite the FTC Claim. To get a Federal transcript from the IRS, go to: www.irs.gov/individuals/get-transcript.

DID YOU KNOW?

CRA reportedly netted more than $30 million from their summer **audit** of **taxpayers holding expensive properties** in Vancouver where only **low amounts of income** were reported. The goal of the project was to identify unreported worldwide income, **property "flipping,"** underreporting of capital gains on sales, and underreporting GST on sales of new homes.

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