Enns & Company
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This publication is a high-level summary of the most recent tax developments applicable to business owners, investors and high net worth individuals. Enjoy!

Tax Tidbits

Some quick points to consider…

- All **eligible Canadian resident seniors** (over age 65), **children under 18** and individuals eligible for the **disability tax credit** can now **apply** for the **Canadian Dental Care Plan**. **Other eligible individuals** will be invited to participate in **2025**. To qualify, the applicant must not have access to dental insurance and the applicant's family income must be below $90,000.
- In July 2024, CRA began issuing **legal warnings** and taking legal measures to collect outstanding **personal COVID-19 benefit** program **debts**. Individuals who have **not responded or cooperated** are being contacted if CRA has determined that they have the **financial capacity to pay** the outstanding amount. CRA encouraged individuals who cannot pay the full amount immediately to contact them and develop a payment arrangement.
- While the **increase** to the **capital gains inclusion rate** from 50% **to 2/3** for corporations and most trusts and from 50% to 2/3 on the portion of capital gains realized in the year that exceeds $250,000 for individuals has not been enacted into law, the government has confirmed that the change would be effective June 25, 2024.

Real Estate: CRA Audit Activity

CRA uses a combination of **risk assessment tools**, **analytics**, **leads** and **third-party data** to detect **non-compliance** in the **real estate sector**. They have identified **ten areas** where they perceive that there is a **significant risk** of non-compliance, as follows:

- **reported income** does **not support lifestyle** (e.g. acquiring expensive assets like real estate without an obvious income source to support it);
- **property flipping** (buying and reselling homes within a short period with the intention of selling them for a profit; CRA has identified three main categories of flippers: professional contractors or renovators, speculators or middle investors, and individual renovators);
- **unreported capital gains** on the sale of property;
- **unreported capital gains** on property sold by **non-residents** and insufficient withholdings, if required, when purchasing property from non-residents;

- **unreported worldwide income** by Canadian residents;
- **unreported GST/HST** on the sale of a new or substantially renovated home;
- **improperly claimed GST/HST rebates** (e.g. when a taxpayer applies for a new housing or rental rebate but actually intended to flip the property for a profit);
- not classifying oneself as a **land developer**;
- not properly reporting/claiming the **principal residence exemption** on an individual's personal tax return; and
- an individual's status as a **realtor** (as a realtor's main revenue stream is from the sale of real estate, CRA has identified them as a higher-risk population).

Based on a historical review of CRA's webpage, it appears that the following three points were **added** in **2024**: **land developer, principal residence exemption and status as a realtor**.

In 2015, CRA increased its **focus** on **real estate non-compliance** in **major centres** such as the greater **Toronto area** and **British Columbia's Lower Mainland** (the greater Vancouver area). From 2015 to the Spring of 2023, CRA reported that the cumulative total of additional taxes and penalties assessed was **$2.7 billion**, derived from approximately **75,000 audits**. While British Columbia only has about a third of the population of Ontario, CRA identified roughly the same amount of tax non-compliance over the past eight years ($1.4 billion in BC and $1.3 billion in ON). Non-compliance in **British Columbia** is largely related to **income tax**, while in **Ontario**, it is largely related to **unpaid GST and HST** on new homes or inappropriately claimed rebates on those taxes. More recently, during the 2022 to 2023 fiscal year, CRA identified $426 million in additional tax and penalties in the real estate sector in Ontario and British Columbia.

ACTION: Ensure that all real estate earnings and dispositions are properly reported and supporting documents retained. Be prepared for extra CRA scrutiny and review.

Business Receipts: What is Sufficient?

In a recent Tax Tip, CRA stated that an acceptable receipt for income tax purposes must contain all of the following:

- the **date** of the purchase;
- the **name** and **address** of the **seller**;
- the **name** and **address** of the **buyer**;
- the full **description** of the goods or services **purchased**; and
- the **vendor's business number** if the vendor is a GST/HST registrant.

Credit card statements are **not generally acceptable** unless they contain all the above information.

ACTION: To avoid disputes when claiming deductions, ensure that receipts contain all the required information.

Crypto-Assets: Reviews and Audits

A recent communication from CRA indicated that they have roughly **400 ongoing audits or examinations** related to **crypto-assets**, including **125 "intent to audit" letters** sent to taxpayers that they believe did not report income obtained through cryptocurrency trading on **Coinsquare**. In 2021, CRA required Coinsquare, via an unnamed persons requirement (UPR), to provide information on its 16,500 top users from 2014 to 2020. These letters provided the taxpayer with **45 days** to **voluntarily** contact CRA to declare any missing crypto-related income, in which case CRA would **waive any penalties and interest**. CRA noted that **failure** to respond may lead to a **full audit** of the taxpayer.

While CRA only reassessed $54 million in undeclared income last fiscal year, a director general at CRA has noted that CRA's **activity** is **evolving rapidly** and that CRA will adjust their compliance measures as the risk of non-compliance changes.

In addition, CRA commissioned a **poll** in 2023 that found **one-third of respondents** did **not** have a **"firm grasp"** of their **tax responsibilities** surrounding crypto-assets. On a **knowledge test** of the **tax rules** surrounding crypto-assets, cryptocurrency users tested **just over 50%**.

CRA has stated that they are considering issuing **additional UPRs** to **other exchanges** until the government implements the **crypto-asset reporting framework** proposed in Budget 2024. The proposals would require crypto-asset service providers to file an annual report that includes customer and transaction information with CRA commencing in 2026.

ACTION: Ensure that crypto-asset transactions are properly reported. Save and store records on an ongoing basis.

Canada Pension Plan: Changes to Certain Benefits

Several **changes** have been introduced to **targeted measures and benefits** under the Canada Pension Plan (CPP). None of the below changes are expected to impact contribution rates.

Death benefit

The CPP death benefit is increased to **$5,000** (from $2,500) where **all** of the following criteria are **met**:

- the **estate** would **otherwise** be **eligible** for the regular death benefit;

- the **deceased** had **not received** any **retirement or disability benefits**, or similar benefits under a provincial pension plan; and
- **no survivor's** benefit is payable as a result of the individual's death.

The increased benefit applies to deaths after **December 31, 2024**.

Children's benefits

Prior to the change, the **CPP surviving child benefit** was only payable to children of a deceased parent if the child was under 18 or between the **ages of 18 and 25** and was a **full-time student**. While this benefit is **still available**, a **similar benefit** has now been introduced for **part-time students**, equal to **50%** of the amount payable to full-time students.

In addition, eligibility for the **disabled contributor's child** benefit is **extended** such that it continues to be **available** even when the disabled **parent reaches age 65**. Previously, the benefit ended when the disabled parent reached age 65.

Survivor benefits

Previously, couples who were legally separated but still married or in a common-law relationship could be eligible for CPP survivor pension on their partner's passing. However, after this change, the **survivor pension** is **not payable after** a **legal separation** where there has been a division of their CPP pensionable earnings following the separation.

ACTION: Ensure you apply for these enhanced benefits if you are eligible.

Canada Pension Plan: Timing of Starting Payments

Individuals can **start collecting Canada Pension Plan** (CPP) retirement benefits as early as age **60**. However, benefits are **decreased** by **0.6%/month** (7.2% per year) **prior to age 65** for a **maximum reduction** of **36%**. They are **increased** by **0.7%/month** (8.4% per year) that CPP is delayed **past age 65** to a **maximum increase of 42%** if collection is deferred to **age 70**. In other words, monthly retirement benefits are more than 2.2 times as large for someone who waits until age 70 rather than collecting at age 60.

A recent National Institute on Aging report indicated that an individual with **median CPP benefits** and an **average life expectancy loses** over **$100,000 of CPP** benefits, in current dollars, by **starting CPP** at **age 60 instead of 70**. The report noted that **9 out of 10 individuals opt** to **start** CPP by **age 65 or earlier**.

The report also noted that **collecting earlier** may be a rational decision for individuals with **financial hardship** or **poor health**, resulting in **reduced life expectancy**. However, it suggested that **most individuals** would be better off **drawing** on **other savings** (such as RRSPs) to bridge the gap **until** reaching **age 70**. The report indicated that 4 in 5 individuals with RRSPs or RRIFs would receive higher lifetime income using this approach.

ACTION: Consider the lifetime benefits and costs when deciding at what age to commence CPP payments.

TFSA: Caution with Overcontributions

Taxpayers who contribute **excess amounts** to their **TFSA** are subject to a **penalty tax** of **1%/month** that the excess contribution remains in the TFSA. If subject to the tax, an individual may apply to have the tax waived. If the individual is unsuccessful after the CRA's first and second review of the application, the individual may apply for a judicial review of the denial in the Federal Court.

Moving Funds between TFSA Accounts

In an April 9, 2024 French **Federal Court** case, the taxpayer **withdrew $40,000** from a **TFSA** at one financial institution **and deposited** it into **another TFSA** at a **different financial institution** at a time when he only had a **TFSA contribution room of $6,270**, leading to an **overcontribution**. **Withdrawals** from a TFSA are only added to an **individual's contribution** room at the **start of the following year**. Had the taxpayer directly transferred $40,000 between the two TFSAs, there would have been no overcontribution. CRA held that the overcontributions were not the result of a reasonable error, so they could not waive the penalty tax.

The Court noted past cases that supported CRA's interpretation that **neither ignorance of the tax law nor bad advice constitutes** a **reasonable error**. The taxpayer's **failure** to **transfer funds** by **direct transfer** between the two TFSA issuers resulted in the penalty tax being properly applied. CRA's decision to deny relief was **reasonable**, and the application for judicial review was dismissed.

Relying On CRA Portals

In a March 27, 2024 **Federal Court** case, the taxpayer made TFSA **contributions in line** with the **available TFSA room** listed on **CRA's My Account**; however, the **balances** online did **not reflect some contributions**, resulting in the taxpayer making **excess contributions**. **CRA alerted** the individual after the excess contributions were made. As the individual **continued** to **contribute** based on the values posted on My Account, the Court found CRA's decision to deny relief on the penalty tax **reasonable**.

ACTION: Do not overcontribute to your TFSA, as the penalty tax can become costly and difficult to pay. Balances posted in My Account may not be timely nor accurate.

Use Of Corporate Assets By Shareholder: Taxable Benefits?

An April 16, 2024 French **Court of Quebec** case considered whether the **shareholder** of a corporation derived **taxable benefits** from **residing** in a **corporate property** for the 2014 to 2016 years and from **allowing** his **ex-spouse** to **reside** in a **second corporate property**. The taxpayer was assessed with a benefit of $142,000 per year.

Taxpayer loses

Although the taxpayer **argued** that any **benefits** received were **offset** by the **expenditures** he made on the properties, he **could not demonstrate** that the **expenditures** actually **occurred** and that **he** was the one who **paid them**. The taxpayer argued that he could **not support** these expenditures due to the loss of documents in a **flood**; however, the Court noted that some evidence conflicted with these claims.

The taxpayer provided the **alternative argument** in respect of one property that if there was a benefit, it did **not exceed $5,500/month** as supported by **evaluations** done by **two different real estate agents**. However, the Court found that the **more robust assessments** completed by Revenu Québec, which suggested a rental value of approximately **double**, were **more representative** of the reality. This was supported by the fact that the **over five thousand square foot property** was listed for **sale** in 2017 for $4,800,000. The Court upheld the assessment.

ACTION: Be cautious about using corporate assets personally without providing compensation for such use.

CEBA: Collection Process

Where borrowers **cannot repay** their **CEBA loan in full** when it becomes due, the loan may be **assigned** from the **taxpayer's financial institution** to the **CEBA program for collection**. **CRA** is **assisting** with the **collection of loans** that are assigned and began said work in the Spring of 2024. Loans may have been assigned if they are in default for reasons such as:

- **not repaying** the **principal** or **interest** when due;
- **becoming insolvent**; or
- **failing** to observe the **terms** of the loan.

When a loan is assigned, a loan **assignment notice** will be **mailed** to the taxpayer containing details on how to make payments and how to set up a payment arrangement with CRA. A **12-digit CEBA identification number** commencing with "967" will be issued for use in registering for a **CEBA portal account**. The portal provides information on the outstanding balance, the payment arrangement, payment history, charge history, monthly statements and contact information. Payment and charge history for only the period that commenced with the assignment to the CEBA program is available on the portal.

While CRA may contact the taxpayer to set up a **payment arrangement**, taxpayers may also initiate communications by **contacting** the **CRA CEBA contact centre** (1-800-361-2808) once the loan assignment notice has been issued.

Payments made to an assigned CEBA loan are applied in the **following order**:

- **fees** outstanding;
- **interest** outstanding;
- **principal** outstanding; and finally
- **interest** accrued.

Authorized **third parties**, such as a family member, accountant or lawyer, can **request information** about the loan through the general CEBA call centre (1-888-324-4201), but they **cannot access the loan** or **sign into** the taxpayer's **CEBA portal account**. To authorize new third parties or manage existing third parties, the taxpayer must contact the CRA CEBA contact centre.

The CEBA program also provided the following guidance in respect of changes to an entity's business.

- **Business closure** – Taxpayers must **repay the loan** even if the business is closed.
- **Ownership change** – The impact of a change in ownership of the borrower **depends** on the **business's legal structure** (e.g. whether the business is a sole proprietor or a corporation) and the **type of ownership change**. The general CEBA call centre should be contacted for more information once loans are assigned.

- **Insolvency** – The CEBA FAQ stated that the CEBA program **cannot provide insolvency advice**.
- **Bankruptcy/consumer proposal/receivership** – If a business has filed for bankruptcy, the appointed **licensed insolvency trustee** can contact the CEBA call centre. The process for entering into payment arrangements does not apply to insolvent taxpayers.
- **Deceased sole proprietors** – To access CEBA-related resources and manage the loan on the deceased's behalf, the **executor** must follow an executor **validation process**, including submitting a **death certificate** and a **will** to the CEBA program. The general CEBA call centre should be contacted to initiate the process.

ACTION: Ensure that a reasonable repayment schedule is established if satisfying the full outstanding CEBA loan immediately is problematic.

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.

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If you have any questions, give us a call!