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Newsletter

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EMPLOYEE OR SELF-EMPLOYED?

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It is important to determine whether a worker is an employee or a self-employed individual. This can impact on how a worker is treated under different legislation, such as the Income Tax Act, the Canada Pension Plan (CPP) Employment Insurance (EI), etc. Basically, the Canada Revenue Agency (CRA) will consider any individual an employee if they provide a paid service, regardless of whether he/she is working full-time, part-time, or seasonally.

The CRA can be requested to provide a ruling as to whether an individual is an employee or a contractor. If the employer considered an individual a contractor, and the CRA considered the individual an employee, the CRA may demand payment of CPP and EI contributions back to their date of hire, and may levy significant financial penalties for non-compliance with the applicable legislation.

Factors to Consider

To determine whether a worker is an employee or a self-employed individual, you need to analyze the worker's terms of employment relating to four factors: control, ownership of tools and equipment, financial risks, and integration.

Control
The most important factor is to check the terms and conditions of employment as they relate to control. Generally, in an employer/employee relationship, the employer controls the way the work is done and the methods to complete the work. It can be difficult to determine the degree of control for professionals; however, if the employer does not directly control the worker's activities, but has the right to do so, the notion of control still exists.

Ownership of Tools and Equipment
Consider if the worker owns and provides tools and equipment to accomplish the work. For this test, points to consider are the amount invested, ownership, and the "right to use" these assets for other uses. In some trades, employees supply their own tools, e.g., garage mechanics, carpenters, etc. In a business relationship, workers who make a major investment in equipment or tools, and pay for costly maintenance, are usually self-employed individuals.

Financial Risks
Consider the degree of financial risk taken by the worker. One has to analyse the terms and conditions of employment regarding the chance of profit and risk of loss. Consider whether the worker is subjected to risks of bad debts, damage to tools or other business risks, and whether the worker is liable for any operating costs.

Integration
This is the final factor to help determine the relationship. Integration has to be considered from the point of view of the worker, not the payer.

Where the worker integrates their activities with the commercial activities of the payer, an employer/employee relationship likely exists. This means the worker is acting on behalf of the employer, is connected with the employer's business, and is dependent on it.

The CRA's publication RC4110(E) is a good reference to deal with this issue http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-e.html

Inside this issue:

"Shoot for the moon. Even if you miss, you'll land among the stars."
Les Brown

Special points of interest:

- ***Maximum RRSP limits:***
  2008 - $20,000
  2009 - $21,000
- ***Federal interest on unpaid taxes:***
  1st Qtr - 8%
  2nd Qtr - 8%
  3rd Qtr - 7%
- ***Tax-exempt car reimbursement:***
  1st 5,000 km - 52 cents/km
  5,001+ km - 46 cents/km
- ***Personal tax instalments:***
  - September 15, 2008
  - December 15, 2008
  - March 15, 2009

FINANCIAL PLANNING CONSIDERATIONS FOR YOUR 18-YEAR-OLD CHILD

Author: Hugh Faloon, CA, CFP, TEP, Partner, Ginsberg Gluzman Fage & Levitz, LLP

Your child is now eighteen and getting ready to go to university in another city or move into a place of their own. Eighteen is the magical age where they become adults under our legal system. They are now legally allowed to vote, can sign contracts, and can also be held accountable for their actions in a court of law. Technically, you, as a parent, cannot legally sign for them any more.

Things to Consider

1. Sometime in the near future they will need to establish a credit rating. An excellent way for them to do so is to consider getting their own credit card. They can start out with a small limit, i.e., $500, which can be increased as they become more established. Most of our children are more computer savvy than we are, and would be able to make their credit card payments online and on time.

2. What about a will? If your child has developed significant net worth, such as an accumulation of investments from family gifts or savings from their summer wages for education or travel, they should consider having a lawyer prepare a very simple will giving direction as to how his/her assets are to be distributed in the event of his/her demise.

   If your child has limited assets, and he/she does not have a will, as the parent, you could apply to the court to have their assets distributed. Generally, if the child was not married and had no children, the assets would go to the parents; however, this would involve a more formal and lengthy court proceeding.
   If your child has fewer assets, a simple way around the issue is to hold the funds in a joint account, with you having rights of survivorship. (Good luck in trying to explain this to your eighteen year old son or daughter who is leaving the nest!)

3. Something else to consider is having the lawyer prepare a Power of Attorney for your adult child. This is very common in financial planning, and it allows you to legally act on their behalf, and you would be accountable for your actions. In most cases, the Power of Attorney document would be kept in a drawer until it is needed (for instance, if your child is in an accident). Without the Power of Attorney, their bank, the CRA, or their credit card company will not release their confidential information to you when you are trying to assist your child by taking care of their financial matters.

4. What about health care? If your child is incapable of making their own medical decisions, doctors with generally listen to the parents wishes. However, to protect your child, he or she should sign what is known as a Living Will or Power of Attorney for Health Care. This gives you the legal right to advise the medical team and make decisions for your child.

As a precaution, we suggest you keep a copy of important documents for them at your home for safekeeping, such as their credit card number, health card number, driver's licence, etc. These copies will come in handy, if the original documents were ever lost.

You may be reading this article and thinking, "How can I do this for them, when I haven't even done it for myself?" If so, it may be time for both you and your child to take care of some basic adult financial planning before they leave home.

AUTOMOBILES — Company/Employer vs. Individual

Author: Hugh Faloon, CA, CFP, TEP, Partner, Ginsberg Gluzman Fage & Levitz, LLP

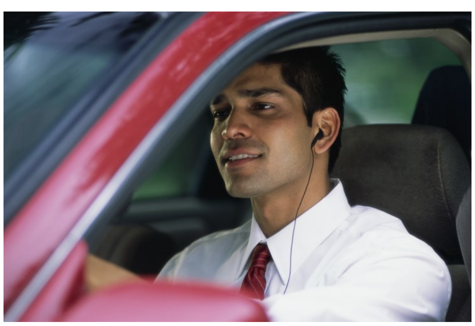
Company/Employer-Owned Vehicles

Using a company/employer-owned vehicle for an employee's personal use can be beneficial and a great incentive; however, the accounting can be burdensome, and the employee may be taxed on the personal benefits. Employers must include this taxable benefit on the employee's T4 slip, and ensure that proper source deductions are remitted.

The taxable benefit is a combination of the value of the car (standby charge) and operating benefit. The standby charge is calculated as 2% of the original capital cost of the vehicle per month available for use (24% per year), or 2/3 of the lease cost for the year. The operating benefit is calculated at 24 cents per kilometre driven for personal use. If business use is 50% or more, the operating cost benefit alternatively can be calculated as 50% of the standby charge, provided that the employer is notified in writing before the end of the year.

There are ways to reduce both the standby charge and operating benefit, if the vehicle is used more than 50% for business purposes. (Please see our full "Automobiles – Company/Employer vs. Individual" article on our web site http://www.ggfl.ca/uploads/automobiles.pdf.)

For company-owned or leased vehicles, the after-tax cash cost of the employee's automobile taxable benefit should be compared to the employee's after-tax cash cost of personally owning/leasing the automobile and receiving the tax-free auto reimbursement.



Individual-Owned Vehicles

If you personally own your automobile, there are basically two options open to you:

1. Receive a tax-free reimbursement based on business kilometres driven, OR
2. Deduct your operating costs, including depreciation of the automobile, based on the business kilometres divided by the total kilometres driven during the calendar year.

To deduct your business use of your car, you will need to:

- Obtain a signed Canada Revenue Agency (CRA) form T2200 Declaration of Employment from your employer confirming that you use your car for business.
- Maintain a record, including receipts for all vehicle expenses (e.g., gas, repairs, lease payments, licence fees, insurance, and loan interest, etc.).
- Maintain a log book to track daily business kilometres. Mark down the odometer reading on December 31 each year to track the total kilometres driven.
- Prepare and file a CRA Form T777 Statement of Employment Expenses with your personal tax return.

There are limits to the various amounts you can claim (see our full article noted in paragraph three). For a further explanation, go to the CRA publication T4044—Employment Expenses, http://www.cra-arc.gc.ca/E/pub/tg/t4044/t4044-e.html.

Using a company/employer-owned vehicle for an employee's use can be beneficial; however, the accounting can be burdensome.

QUICK TAX FACTS

Author: Hugh Faloon, CA, CFP, TEP, Partner, Ginsberg Gluzman Fage & Levitz, LLP

RRSP accounts creditor-protected in bankruptcies
Effective July 7, 2008, RRSP accounts will be creditor-protected in bankruptcies. However, any amounts contributed in the twelve months preceding the bankruptcy will not be protected. With this new provision, you have more financial flexibility for RRSP planning. You are not forced to use insurance segregated RRSP accounts if you want to protect your RRSP investments.

US-Canada tax treaty remains unratified
Alan E. Weiner, CPA, Senior Tax Partner of Holtz Rubenstein Reminick LLP, one of our independent DFK International member firms in New York City and Long Island, NY, alerts us that, according to the Bureau of National Affairs (BNA) in the USA, the US Senate left for the August congressional recess without ratifying the Canada/United States Tax Treaty, despite hopes raised after the US Senate Foreign Relations Committee sent it to the full Senate prior to the summer break. The future of the treaty upon Congress's return to Capitol Hill remains unclear, according to the BNA. The new US-Canada protocol eliminates withholding tax on cross-border interest payments and provides for binding arbitration of unresolved cases involving double taxation.

Time to look at family loans
The prescribed interest rates on taxable benefits and low interest loans for the third quarter of 2008 are down 1% to 3%. It may not be a bad time to loan family members funds or to restructure loans previously taken out at higher interest rates. To avoid income from the loan being attributed to the person loaning the money, a formal loan document should be created, and the interest must be paid within 30 days of the end of the calendar year (meaning on or before January 29th).

Capital Cost Allowance (CCA) rate alert
The new CCA / depreciation rates announced in the March 19, 2007 Budget for computers and commercial buildings have still not been passed; however, there is no reason to believe they won't be. It's just a matter of time. Once passed, on purchases made after March 19, 2007, the CCA rate will increase to 55% from 45% for computers, to 10% from 4% for buildings used in manufacturing or processing, and to 6% from 4% for other non-residential buildings. The rules for buildings include the filing of elections, and the buildings must meet a 90% use test to qualify for the higher CCA rates.