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Newsletter

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CAN YOU CLAIM YOUR FOREIGN TUITION?

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In recent years, it has become increasingly common for university students to choose to attend university outside of Canada for some or all of their education. This attendance could take the form of online internet-based courses or actual physical attendance.

In light of this, the question of whether tuition paid to foreign institutions qualifies for Canadian tuition tax credits and education amounts has become increasingly common. Not surprisingly, the Canada Revenue Agency (CRA) initially chose to take the position that these tuition outlays did not qualify.

Three recent court cases ruled in favour of students who chose to challenge the CRA's interpretation of the law. Specifically, as a result of *Linda E. Valente vs. The Queen* and *Edward Kuwalek vs. The Queen*, the CRA has reconsidered its interpretation of the section of the *Income Tax Act* that specifies what constitutes full-time attendance. A student enrolled at a university outside of Canada and taking courses over the internet may be able to claim a tuition tax credit for the related tuition fees, provided the student is able to demonstrate that their attendance via the internet constitutes full-time attendance. In *Valente*, the judge felt that benefit of the doubt should go to the student and stated, "I think it is strongly arguable that full-time attendance at a foreign university can include full-time attendance through the internet or online, as is the case here. That view conforms to common sense and to the reality of modern technology. If there continues to be doubt on the point, Parliament should move to resolve that doubt."

To qualify for the tax credit, the other eligibility requirements (e.g., fees paid for courses not less than 13 consecutive weeks in duration) must also be satisfied.

In *Brigid A. Shea vs. The Queen*, the taxpayer completed and was awarded a Master of Science in Comparative Politics by the London School of Economics and Political Science (LSE). In assessing the taxpayer for 2006, the Minister disallowed the tuition and education tax credits. The CRA's position was that LSE was not a degree-granting institution, and thus was not a university outside of Canada.

The Tax Court ruled that a university outside of Canada within the meaning of the *Income Tax Act* is an educational institution that confers degrees usually granted by universities. LSE was on the list of the 19 colleges forming part of the University of London and was permitted to grant degrees of the University of London. Therefore, LSE was a university outside of Canada, and the taxpayer was entitled to the credits claimed.

"One of the secrets in life is to make stepping stones out of stumbling blocks."
Jack Penn

Special points of interest:

- ***Maximum RRSP limits:***
  2008 - $20,000
  2009 - $21,000

  NOTE: The deadline for making RRSP contributions deductible in 2008 is March 2, 2009
- ***Open your Tax Free Savings Account — effective January 1, 2009***
- ***Personal tax instalments:***
  - March 15, 2009
  - June 15, 2009

TAXATION OF EMPLOYER-PAID GROUP INSURANCE PREMIUMS

Author: Beth Porter, CA, CFP, Tax Partner, Noseworthy Chapman Chartered Accountants

Different group insurance premiums attract different tax implications. The following is a summary of the tax implications to both the employer and employee of employer-paid insurance premiums:

Medical & Dental

The cost of a private health services plan does not attract federal income tax. Employers receive a tax deduction for the cost of the benefit and employees do not pay federal income tax on the cost or the benefits received from the plan.

Disability Insurance

A common benefit provided to employees is disability insurance. The taxability depends on whether the employer paid the premiums. Premiums deducted from employees' paycheques are considered premiums paid by the employee.

Employer-Paid

Employer contributions toward the cost of disability insurance are non-taxable benefits, but the disability claim benefits are taxable income. The employee can offset the taxation of their claim with their contribution toward the premium.

Employee-Paid

If the employee pays the full cost of disability insurance, any disability claim benefits are non-taxable income.

Life Insurance

Employer contributions toward the cost of employee or dependent life insurance are taxable benefits.

Accidental Death & Dismemberment (AD&D)

Employer contributions toward the cost of Accidental Death & Dismemberment insurance are non-taxable benefits.

Type of Benefit	Federal & Most Provinces Taxable Benefit
Employee & Dependent Life Insurance	Yes
Accidental Death & Dismemberment (AD&D)*	No
Medical & Dental *	No
Short-term & Long-term Disability	No

* Considered taxable benefits for provincial tax purposes in Quebec only. All other provinces follow the federal rules.

Planning for Group Insurance Plans

Using the information above, planning can be done to minimize employee tax implications, while preserving employer tax deductions. For example, consider an employer plan that covers 50% of premiums, including the following monthly premiums:

Disability	$180
Private medical	125
Dental	75
Life Insurance	190
AD&D	80
Total	$650

If an employer pays half of each premium, the employee will be taxed on disability benefits collected (less his half of premiums paid) and on the employer's half of life insurance—a taxable benefit of $95 per month. He can only claim his half of medical and dental premiums as a medical expense on his personal tax return. If the employer pays all private medical and dental coverage ($200), the employee pays all disability coverage ($180), and the employer pays $45 of life and all AD&D coverage while the employee pays the remaining $145, the employer and employee are still paying half of the total premiums. However, payments from the disability plan will be tax-free to the employee, and his taxable benefit is only $45 per month. All premiums paid by the employer would be tax deductible.

It is important that these payments be structured carefully, and it is recommended that the employer and employee have a written agreement or policy in place as to which party is paying for which premiums.

REGISTERED DISABILITY SAVINGS PLANS (RDSPs) – A NEW FINANCIAL SECURITY REGIME FOR THE DISABLED

Author: Louis Nadeau, D. Fisc., Levy Pilotte, LLP

A Registered Disability Savings Plan (RDSP) is a trust arrangement between a holder and an issuer (a trust company in Canada). The purpose of such a plan is to provide for the long-term financial security of a beneficiary who has a prolonged and severe physical or mental impairment.

The beneficiary must be eligible to receive the Disability Tax Credit (DTC). The contributions to this plan give rise to a federal credit called the Canada Disability Savings Grant (CDSG). Lower income families may qualify for payments from the Canada Disability Savings Bond Program without having to make a contribution to an RDSP. The 2008 deadline for opening an RDSP, making contributions, and gaining access to the CDSG is March 2, 2009.

Requirements and contributions to an RDSP

For any person who is entitled to a DTC, his/her legal parents or legal representative can establish an RDSP for the benefit of that person. The person must be under the age of 60, be eligible for the DTC, and be a Canadian resident when the plan is established. Only one RDSP is allowed per beneficiary, and it cannot be changed once it is established.

There is no limit to the amount of contributions that can be made in a designated year; however, the total payments cannot exceed the lifetime limit of $200,000. The contributions to an RDSP are not deductible and cannot be claimed back by the payer (only by the beneficiary). In order to maximize the benefit of the CDSG, it is recommended that annual payments be made to the RDSP.

Canada Disability Savings Grant (CDSG)

The CDSG is an annual payment made by the Federal Government to an RDSP based on the family income of the beneficiary (from the second previous taxation year) and the annual payments. If the family income is under $75,770, the amount of the CDSG is $3 for each dollar contributed on the first $500 and $2 for the following $1,000 of contributions. When the family income is over $75,669, the amount of the CDSG is $1 per dollar contributed on the first $1,000. The CDSG is limited to $3,500 per year and it cannot exceed $70,000 lifetime. An RDSP is eligible to receive a CDSG until the end of year the beneficiary reaches the age of 49.

Income generated by RDSP and withdrawals

Income generated inside the RDSP is not taxable in the RDSP, unless the plan is holding non-qualifying investments. In this case, the RDSP might be charged a special penalty tax.

RDSP withdrawals (except the portion coming from RDSP contributions) are included in the taxable income of the beneficiary. Withdrawals must begin before the end of the year in which the beneficiary reaches the age of 60 and are limited according to the life expectancy of the beneficiary and the fair market value of the plan. RDSP withdrawals do not affect the tax benefits and federal credits that are based on revenue, such as the Canada Child Tax Benefit, GST Credit, Old Age Security, and Employment Insurance.

Cessation of eligibility for DTC and death of the beneficiary

When a beneficiary ceases to be eligible for the DTC or dies, the RDSP must pay back to the Federal Government all the payments it received as CDSG for the last ten taxation years. The remainder of the RDSP must be paid to the estate of the beneficiary no later than at the end of the following year.

SENIOR TAX ALERT—ACTION REQUIRED

**Author: Hugh Faloon, CA, CFP, TEP, Tax Partner,
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A little reminder for you, your parents, or grandparents.

The November 27, 2008 Federal Economic Statement introduced a measure that, based on existing 2008 laws, allows individuals who received the full minimum amount of their RRIF to repay 25% of the minimum amount to their RRIF account and get a deduction for the repayment.

The repayment must be made by the later of March 2, 2009 or 30 days after these proposals receive Royal Assent (passed by Parliament). The Federal Government is dealing with several challenges; therefore, we don't know when it will receive Royal Assent.

Individuals who turned 71 in 2008 should not be affected, since changes were made in 2007 that deemed the minimum amount in 2008 to be nil.

Some of the benefits of the repayment of the 25% include:

- reduced income taxes in 2008
- more capital in the RRIF to earn extra income
- tax savings if money is withdrawn in years when the individual is in a lower tax bracket
- reduced Old Age Security (OAS) clawback, if income with the 25% repayment is lower than $105,266.

If you are taking advantage of the pension income-splitting rules with your spouse, the tax saving could be lower if he or she is in a lower tax bracket. Here is a link to the CRA's summary of the proposed changes
http://www.cra-arc.gc.ca/E/pub/xi/08-121/08-121-e.pdf.

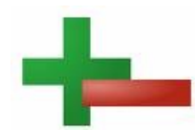
DEDUCTIBILITY OF FINES AND/OR PENALTIES

Author: John Connolly, CMA, MRSB Chartered Accountants

The *Income Tax Act* generally makes fines and penalties non-deductible. However, arrears interest on late remittances or interest on money borrowed to pay outstanding fines, penalties or late remittances are not addressed.

In a 2005 interpretation, the CRA outlined its position on this topic which is worthy of review:

- Generally, interest paid or payable on federal or provincial income tax owing, or on a loan taken out to make such payments, will not be deductible.
- Interest on GST paid or payable, or on a loan taken out to make such payments will not be deductible where the GST is collected as an agent of the Crown (i.e., GST that was or should have been collected on revenues). However, where a purchaser is entitled to deduct the cost of GST in computing its income from business or property (i.e., GST payable on deductible expenses), the interest paid on a loan taken out to make such GST payments would be considered deductible.
- Similar to interest on GST owing, interest on a provincial sales tax assessment or reassessment, or on a loan taken out to make such payments, generally will not be deductible if it relates to sales tax collected as agent of the Crown. The interest will generally be deductible if the payment is for sales tax on deductible expenses.



TAX TIDBITS

- Remind your children to sign their 2008 tuition slips to allow a credit transfer.
- Ask your pharmacy for a printout of your drug orders for the year (instead of individual slips) for the 2008 medical tax credit.
- You can now pay your personal income tax payments online, very easily.
- Get receipts to claim Fitness Tax Credits for your children.
- Retain your monthly transit pass receipts to claim the Public Transit Credit.
- Claim the new Home Renovation Credit to a maximum of $1,350, available in 2009.