

Kurt Rosentreter Tax Planning Tips Q3 2018



Tax Ticklers – Some Quick Points to Consider

- A large amendment to a T4 slip may trigger a payroll audit. Ensure that T4 slips are as accurate as possible at the outset.
- CRA may request taxpayer information from third-parties. A recent project using third-party data identified \$86 million of unreported income and attracted over \$19 million in additional taxes. CRA stated additional projects began in late 2017.
- A recent poll found that 51% of Canadians have no will, and only 35% have one that is up to date. Quebec and B.C. lead the provinces (58% and 54% respectively), with the less than 50% in all other provinces.

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Subsidized Meals: Are They a Taxable Benefit?

Do you have an employee dining room or cafeteria? In a March 21, 2018 Technical Interpretation, CRA stated that they do not consider meals subsidized by the employer to be a taxable benefit provided the employee pays a reasonable charge. This charge should be sufficient to cover the cost of the food, its preparation and service.

Where the charge is less than the cost, the difference would be considered a taxable benefit and should be included on the employee's T4. It is also important to note that the taxable benefit would be pensionable (CPP remittance required), but not insurable (no EI remittance required).

Kurt's Comments on Subsidized Meals:

Due to the tax cost to the employee, in addition to the administrative tracking costs, one should consider having employees pay at least a reasonable amount for meals provided.

Kurt's Comments on Employer-Sponsored Social Events:

Ensure the cost of employer-sponsored events do not exceed this threshold to avoid a surprise tax cost for employees.

Employer-Sponsored Social Events: After the Party

In an April 9, 2018 French Technical Interpretation, CRA clarified their position on taxable benefits arising from employer-sponsored social events, such as a holiday party or other event.

Where the cost of the social event does not exceed \$150/person (previously the limit was \$100), excluding incidentals such as transportation, taxi fares and accommodations, there would be no taxable benefit to employees. CRA indicated that the cost should be computed per person who attended, and not per person invited.

If the cost exceeds \$150/person, the entire amount, including the additional cost, is a taxable benefit to the employee. In these cases, only employees attending the function would be subject to the taxable benefit.

Directors: Can They Be Liable for Corporate Income Taxes?

A December 11, 2017 Tax Court of Canada case examined whether a taxpayer was liable for unpaid income taxes of the corporation of which he was a director. CRA's assessment was based on the assertion that the taxpayer was a legal representative of the corporation and had distributed assets of the corporation without having first obtained a clearance certificate from CRA.

A clearance certificate essentially confirms that the corporation has paid all amounts of tax, interest and penalties it owed to CRA at the time the certificate was issued. Legal representatives that fail to get a clearance certificate before distributing property may be liable for any unpaid amounts, up to the value of the property distributed.

Taxpayer wins

The Court examined whether the taxpayer was a legal representative and personally liable for the corporation's unpaid taxes. The definition of a legal representative does not specifically include directors, despite naming many other persons (e.g. a receiver, a liquidator, a trustee, and an executor). While a director could become a receiver or liquidator for a corporation, carrying out the usual activities of a director, such as declaring dividends, would not result in the director being a "legal representative".

A director could become a legal representative where:

- a. additional powers beyond directorship have been legally granted or, if not legally granted, were available and assumed;
- b. these additional powers allowed the legal representative to legally and factually dissolve (wind-up) and liquidate the corporation; and
- c. by virtue of these powers, the director liquidated the assets of the corporation.

In this case, no such legal powers had been conferred or exercised. The taxpayer was not considered to be the corporation's legal representative. Also, the corporation had not been dissolved. As such, the taxpayer was not personally liable for unpaid corporate income taxes.

Kurt's Comments:

If you are a director and legal representative of a corporation, ensure that you are properly protected if distributing assets.



Kurt's Comments

If you are involved with a charity, ensure properly completed donation receipts are being distributed.

Donation Receipts: How Complete Is Complete?

Charities should ensure that any donation receipts issued are fully compliant with the tax rules. Failure to do so may result in the donor being denied a charitable donation if reviewed by CRA. This could cause operational and goodwill problems for the charity.

Receipts for cash gifts must have the following:

- a statement that it is an official receipt for income tax purposes;
- the name and address of the charity as on file with CRA;
- a unique serial number;
- the registration number issued by CRA;
- the location (city, town, municipality) where the receipt was issued;
- the date or year the gift was received and the date the receipt was issued;
- the full name, including middle initial, and address of the donor;
- the amount of the gift;
- the amount and description of any advantage received by the donor;
- the eligible amount of the gift;
- the signature of an individual authorized by the charity to acknowledge gifts; and
- the name and website address of CRA.

Receipts for non-cash gifts must also include:

- the date the gift was received (if not already included);
- a brief description of the gift received by the charity; and
- the name and address of the appraiser (if the gift was appraised).

The amount of a non-cash gift must be the fair market value of the gift at the time the gift was made.



Donation Receipts - continued

Effective March 31, 2019, charities and qualified donees must include the new website address of CRA, www.canada.ca/charities-giving on all donation receipts. This follows the move of various old Federal Government websites to the new official www.canada.ca website.

Interest Deductibility: Returns of Capital

In an April 20, 2018 Tax Court of Canada case, at issue was whether the taxpayer could deduct interest incurred in 2013, 2014 and 2015 related to \$300,000 borrowed in 2007 to purchase mutual funds. From 2007-2015, the taxpayer received a return of capital from the funds, totalling \$196,850 over the period. A return of capital is essentially a return of the taxpayer's original investment. The taxpayer used some proceeds to reduce the loan principal, but the majority was used for personal purposes.

Taxpayer loses

The Court examined whether there was a sufficiently direct link between the borrowed money and its current use in respect of gaining or producing income from the investments.

As much of the returned capital was used for personal purposes, there was no longer a direct link to the income earning purpose. The Court upheld CRA's denial of interest expense.

Kurt's Comments:

Where funds are borrowed to invest, one may need to track any return of capital which is not reinvested to determine interest deductibility.

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- Small business advanced tax planning
- Tax effective design of retirement cash flows
- Tax wise Will design
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