



Newsletter – August 2020

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TAX TICKLERS... some quick points to consider...

- As of August 9, 2020, the Government has approved **813,570 Canada Emergency Wage Subsidies (CEWS)**, with a total value exceeding **\$26 billion**.
- To **estimate** your **CEWS** entitlement, consider using the CEWS 2.0 Estimator at [WageSubsidyCalculator.ca](https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html), or CRA's more complete calculator at <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html>.
- The Government has launched a webpage, <https://www.canada.ca/en/services/business/maintaining-your-business.html>, to help manage one's business during COVID-19. It provides links to **government financial supports** and **loans**, **reopening** guidance and rules, **employee** issues, **industry-specific** assistance, **tax** issues, and a **support phone line**.



CANADA EMERGENCY BUSINESS ACCOUNT (CEBA)

In April 2020, the Government of Canada announced that it will be providing the CEBA to support Canadian businesses that have been adversely affected by COVID-19. Eligible businesses could apply for a \$40,000 loan from the businesses' banks for immediate financial support to cover short term operating expenses, payroll and other non-deferrable expenses. At the inception of this special CEBA assistance package, there were limited guidelines as to what type of expenses CEBA is designed to help the affected businesses. Over the many months since, most banks have issued detailed guidelines and we encourage those businesses which have applied for CEBA loans to revisit the restrictions to see if their businesses qualify to access the CEBA loan program.

WORKING FROM HOME: Reimbursing Employees for Technology Costs

In an April 14, 2020 French **Technical Interpretation**, CRA was asked whether **amounts paid** to an **employee** for costs of **equipment for working remotely** would be a taxable benefit.

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Generally, a **reimbursement** for a **personal purchase of equipment** used for working remotely would be a **taxable benefit**. However, CRA noted that in the **context of the COVID-19 pandemic**, which has required many employees to **work remotely**, acquisition of **computer equipment** may be primarily for the employer's benefit. In that context, CRA indicated that no taxable benefit would arise for a

CRA did not comment on the consequences if the equipment were used exclusively for employment and was owned by the employer, not the employee. CRA has indicated in the past that, where equipment is property of the employer, and any personal use is incidental; there would be no taxable benefit to the employee.

ACTION ITEM: Consider providing a reimbursement to employees for the personal purchase of equipment for working remotely of up to \$500.

REAL ESTATE PROJECTS: Watch Out!

General CRA activity

Over the last few years, CRA has **focused on purchases and sales** within the **real estate** sector. They are reviewing transactions for several items, such as:

- **property flips** on account of income;
- ineligible **principal residence** claims;
- **commissions** on sales;
- **pre-sale condo assignments**; and
- eligibility for the **GST/HST new housing and rental rebates**.

One method for reviewing such transactions is by requiring taxpayers to respond to a **detailed questionnaire**. The questionnaire covers items such as:

- date and details of **purchase and sale** in sale agreements, statements of adjustments, and mortgage/financial documentation;
- details of any major **renovations**, building **permits**, construction **contracts**, and **municipal approvals**;
- **estimates of fair market values** at different key points (such as after the completion of a renovation);
- real estate **listing agreements**; and
- invoices, receipts, **bank statements**, **driver's licence**, and other **items** which **indicates the address** of the property.



reimbursement, supported by actual invoices or receipts, of no more than **\$500** towards such equipment.

CRA also stated that a non-accountable **allowance** would **always** be **taxable**, as no provision would provide for an exclusion of such amounts.

The purchaser's intention for the use of the property is key in determining the appropriate tax treatment upon sale.

U.S. real estate

On June 25, 2020, CRA issued a solicitation for engaging one or more **third-party suppliers** to provide "**U.S. real estate** and real property **data** where a **Canadian resident** is the **owner** or party to the **purchase, sale or transfer**" back to, at a minimum, **January 1, 2014** with ongoing provision of **new data** on a **monthly** basis.

CRA may consider reviewing several issues in this context, including:

- **missed disclosure** of real estate **not exclusively** held for **personal use**;
- unreported **rental income**, whether not reported at all or not reported accurately;
- unreported **real estate sales**; and
- inappropriate claims for the **principal residence exemption** on such dispositions.

ACTION ITEM: Even a fully exempt principal residence sale was required to be reported for 2016 and later years. Where disposals of real estate in 2016 or subsequent years are not reported, CRA can reassess for an unlimited period. Ensure all disposals, in Canada and abroad, are reported on the tax return.

LOANS FOR VALUE: Income Splitting Tool

Special **attribution rules** prevent the shifting of income between certain related people (including a spouse, parent, grandparent, sibling, uncle or aunt). Consider the situation where high-earning Spouse A gives investments to low-earning Spouse B so that investment income can be taxed at Spouse B's lower tax rate. The attribution rules prevent this by requiring the earnings to be **taxed in the hands of the transferor**, Spouse A. However, these rules **do not apply where** the low-income person pays **fair market value** for the capital received. One way to pay for such investment capital is with properly structured loans, commonly referred to as "**loans for value**".

The loan must satisfy several conditions to facilitate income splitting:

- the loan must **bear interest**;
- the interest must be at a rate no lower than the **CRA prescribed rate** at the **date** the loan is **advanced**; and
- the interest for every year must be **paid no later than January 30** of the following year.



Missing a single **interest payment** **invalidates the loan** for the year in respect of which the interest accrued and **all subsequent years**. For example, interest for 2019 was required to be paid by January 30, 2020. If the interest was not paid, attribution would apply for 2019 and all subsequent years.

The **borrower** (commonly a trust for minor children or grandchildren) can then **invest** the borrowed funds and earn income. Because the borrowed funds are used to earn income, the borrower is entitled to **deduct the interest incurred** as a carrying charge. To the extent the return on their investments exceeds the interest; the **difference** will be **taxable to the lower-income borrower**.

This planning tool is of **particular interest now** as CRA's prescribed **interest rate declined to 1%** (from 2%), as of July 1, 2020.

CRA has confirmed that the interest rate can be **fixed** at the time the **loan is advanced, without further adjustment** when the prescribed rate changes. However, where a **pre-existing loan** requires **higher interest** (such as the 2% rate in effect to June 30, 2020), the rate **cannot be adjusted downwards** as it is also locked in at initial advance. Where there is an existing loan at 2% (or higher), refinancing at the lower 1% rate would require that the borrower **repay the original loan**. A **new loan** could then be **advanced** at 1% interest. Where **appreciated assets** must be **transferred or sold** to repay the loan, **accrued gains** would need to be reported.

ACTION ITEM: Consider setting up a loan for value if there is significant investment capital available, and a family member at a lower marginal tax rate.

OAS DEFERRAL: Undoing an Application

As of July 1, 2013, where receipt of Old Age Security (OAS) is delayed, the monthly pension is **increased by a factor of 0.6%** for **each month deferred**, to a maximum increase of 36% (60 months, commencing receipt at age 70).

In a March 25, 2020 **Federal Court** case, the Court **reviewed** Service Canada's decision to deny **relief** to an **individual** who **applied** to cancel his **OAS pension** slightly more than one year after it had commenced. The taxpayer wanted to benefit from recent changes which allowed **deferral of receipt** in exchange for **higher future payments**. His **entire OAS pension** for the previous year was **lost** due to high earnings.



Normally an individual has the ability to **cancel** a pension only **within six months** of the first payment. However, the Court looked to a special provision which allows the government to take **remedial action** for **denied benefits** resulting from **erroneous advice** or administrative error in the administration of the OAS Act.

Taxpayer wins

The Court found that the government was **not required to demonstrate** that **communications** advising the taxpayer of changes to the rules **had been appropriately delivered**. However, they were **required to demonstrate** that these communications **had been sent**, and the evidence they provided did not demonstrate their mailings went to the specific taxpayer. Therefore, the decision to deny relief was **not reasonable**. Further, although the taxpayer did **not lose immediate benefits** as a result of the early application, there were **future benefits lost** due to the denied deferral.

ACTION ITEM: Before applying for OAS, make sure to determine whether your income (and expected income) will erode the benefits. If so, consider deferring application to benefit from increased future OAS payments.

UNREASONABLE ALLOWANCES: Fully or Partially Taxable?

In a May 15, 2020 **Federal Court of Appeal** case, the Court reviewed whether **various allowances** paid to **employees** of the taxpayer were **subject to CPP and EI**. This **required determining whether** the allowances were **taxable**. The Tax Court of Canada had previously ruled that some of the allowances were **partially taxable**, while others were either

fully taxable or fully non-taxable. At issue in this case was whether an allowance could be **partially taxable** or whether being **in excess of a “reasonable amount”** resulted in the allowance being **entirely taxable**.

Taxpayer loses

After reviewing the **exclusion of reasonable travel allowances from income** rules, the Court concluded that the **entire allowance** is **excluded** from income if it is **reasonable** or fully **included** in income if it is **unreasonable**. It **cannot be partially taxable**. As the allowances in question exceeded a reasonable amount, they were **entirely taxable**.

ACTION ITEM: *It is extremely important to ensure that allowances paid are reasonable. If they are determined to be unreasonable, even if by the thinnest of margins, the full allowance could go from non-taxable to taxable. Consult with a specialist to ensure that they are comfortably reasonable.*

EMPLOYMENT INSURANCE (EI): Voluntary Departure

In a June 5, 2020 **Federal Court of Appeal** case, the Court reviewed Service Canada’s decision to **deny EI benefits** on the basis that the individual **left his employment voluntarily**. The individual argued that although it was his decision to leave, he had **just cause** (which would allow him to receive EI). To have just cause, the individual would be required to establish that he had **no reasonable alternative** but to leave his job.



Taxpayer loses

The Court found **no reviewable error** in earlier decisions, noting that the **individual could have:**

- **discussed his concerns** more thoroughly with his employer to **explore possible accommodations** (rather than asking on arrival at the worksite not to work the night shift);
- **requested medical leave**, consulted with a doctor, or obtained a doctor’s note; or
- **continued to work** until he found other employment.

The Court also noted the individual’s own statement that he **could have continued working** if his employer had not refused to **pay him an additional \$3/hour**.

The Canada Emergency Response Benefit (CERB) angle

Voluntary departure from a position (quitting) also prevents participation in the CERB. Although there is uncertainty as to whether a “voluntary departure” for CERB purposes has the same meaning as for EI, they will likely be fairly similar.

ACTION ITEM: *Eligibility for CERB is dependent upon whether it is the employer or employee’s decision to leave, and why that decision was made. Prior to changing employment status of workers, consult with a human resources specialist or lawyer to understand the implications for both the business and the employees.*

CHANGES TO PAYROLL: Correcting Errors



What if I make a **clerical, administrative, or system error** resulting in a salary overpayment? On April 6, 2020, CRA released the updated guide **RC4120 Employers’ Guide – Filing the T4 slip and Summary** providing **detailed instructions** on these such issues.

The employer **may elect to have the employee repay the net amount** (gross amount less CPP, EI and income tax withheld) overpaid due to the error, provided they meet the following criteria:

- **no later than three years** after the end of the year in which the salary was overpaid
 - the employer **made the election** in the prescribed manner (see below),
 - the **employee repaid** or arranged to repay the net amount of the overpayment;
- the employer did **not issue a T4 slip** with the employee’s **correct earnings** (that is, with the salary overpayment removed); and
- the employer’s business is **actively operating**.

This election would reduce the cashflow burden the employee would otherwise bear.

The election

The **election** is made by either **excluding the salary overpayment** from an original T4 slip or **amending a T4 slip** to remove the overpayment and reducing the corresponding income tax deducted, along with CPP and EI withheld and remitted.

Repayment after the T4 is issued

If the employee repays or arranges to repay **after the original T4** is issued, the employer must amend the T4 slip appropriately, including any relevant CPP and EI adjustments.

After CRA receives and processes the amended T4, it will **credit** the income tax, CPP and EI remitted on the salary overpayment made in error (including the employer's share of CPP contributions and EI premiums) to the **employer's payroll program account**. The employer can then **reduce the next payroll remittance** by the credited amount.

Finally, CRA also provided **guidance and examples** for situations in which the employer **does not elect to have the net amount repaid**, and the gross amount is repaid instead.

ACTION ITEM: *Over the course of the COVID-19 pandemic, many adjustments have been made to payroll for businesses. If a T4 correction or wage adjustment is required, consult with the detailed guidance in publication RC4120, or reach out for assistance.*

TEMPORARY LAY-OFFS: Supplemental Unemployment Benefit (SUB) Plans

The purpose of a SUB plan is to allow an employer to make **supplemental payments** to Employment Insurance (EI) benefits, **without eroding those EI benefits**. As payments under a registered SUB plan are not insurable earnings, EI **premiums are not deducted**.



In order to be eligible, SUB plans must be **registered with Service Canada** before their effective date. Plans must:

- **identify the group** of employees covered and the duration of the plan;
- **cover** a period of unemployment caused by one or a combination of the following:
 - **temporary stoppage of work,**
 - **training,**
 - **illness, injury or quarantine;**
- **require** employees to apply for and be in receipt of **EI benefits** in order to receive payments under the plan;

- require that the combined weekly payments from the plan and the portion of the EI weekly benefit rate does **not exceed 95%** of the employee's **normal weekly earnings**;
- require it be entirely **financed by the employer**;
- require that on **termination** all remaining assets of the plan will **revert to the employer** or be used for payments under the plan or for its administrative costs;
- require that **written notice** of any **change** to the plan be given to Service Canada **within 30 days** after the effective date of the change;
- provide that the **employees have no vested** right to payments under the plan except during a period of unemployment specified in the plan; and
- provide that **payments** in respect of guaranteed annual remuneration, deferred remuneration, or severance pay **will not be reduced** or increased by payments received under the plan.

A plan registered with Service Canada is **not required to be a trust**. It could be funded from general revenues.

Income tax treatment

For income tax purposes, a SUB plan is **defined more restrictively**, as it is required to be a **trust** to which the **employer makes payments**. Such plans can be **registered** with CRA, in which case any **income** earned **within the SUB** trust is **non-taxable**. Whether or not registered, **receipts** are **taxable** to the **employee**. **Payments to a registered SUB plan** are **deductible** to the employer if made no later than **30 days after year-end**. Payments to SUB plans are **not otherwise deductible**, so a plan structured as a trust **must be** registered for **employer contributions** to be deductible.

A SUB plan which is **not a trust** would not be subject to the above rules. **Deductibility of payments** would follow the **general rules** for all expenses for income tax purposes.

Interaction with the Canada Emergency Response Benefit (CERB)

The provisions that exist under the EI system for employers to make additional payments to workers through SUB plans **do not apply to employees** who are receiving the **CERB**.

Amounts received by individuals from any employer in **excess of the \$1,000 threshold** would create an obligation for the individuals to **repay CERB** they received for the same benefit period.

Employers that wish to do so may **continue to submit a SUB plan** to Service Canada. By registering a plan, employers can make payments to employees who are **currently receiving EI regular or sickness benefits** and will also be prepared should employees need EI benefits at a future time.

ACTION ITEM: As CERB is scheduled to end September 26, 2020, many individuals will now begin to rely on the EI system. The time may be right to consider setting up SUB plans as individuals transition to traditional EI.

HOME ACCESSIBILITY TAX CREDIT (HATC)

The Canada Revenue Agency (CRA) first introduced the Home Accessibility Tax Credit (HATC) for the 2016 tax year to provide tax relief to individuals who are required to make alterations to their home due to mobility challenges. It is a non-refundable tax credit for work performed or goods acquired in respect of a **qualifying renovation** of an **eligible dwelling** of a **qualifying individual**. A maximum of \$10,000 per year in **qualifying expenses** can be claimed by a qualifying individual or an **eligible individual**, resulting in a maximum non-refundable tax credit of \$1,500 per year.

When there is more than one qualifying individual for an eligible dwelling, the total eligible expenses cannot be more than \$10,000 for the dwelling. The claim can be split between the qualifying individual and the eligible individual(s) for the qualifying individual. If the claimants cannot agree on what amount each person can claim, the CRA will determine the amounts.

A **qualifying individual** is an individual who is eligible to claim the disability tax credit at any time in a tax year, or an individual who is 65 years of age or older at the end of a tax year.

An **eligible individual** includes a spouse, common-law partner, and certain supporting relatives of a qualifying individual.

A **qualifying renovation** is a renovation or alteration that is of an enduring nature and is integral to the eligible dwelling. The renovation must allow the qualifying individual to gain access to, or to be mobile or functional within, the eligible dwelling or reduce the risk of harm to the qualifying individual within the eligible dwelling or in gaining access to the dwelling.

Qualifying expenses qualify when they are made or incurred in relation to a qualifying renovation or alteration to an eligible dwelling and are of an enduring nature and integral to the dwelling. As a general rule, if the item you purchase will not become a permanent part of your dwelling, it is not eligible.

An **eligible dwelling** is a housing unit located in Canada. It must be the principal residence of the qualifying individual at any time in the tax year. In general, a housing unit will be considered to be a qualifying individual's principal residence where it is ordinarily inhabited (or is expected to be ordinarily inhabited within that tax year) by the qualifying individual and it is owned (either jointly or otherwise) by the qualifying individual or the qualifying individual's spouse or common-law partner. For the purposes of the home accessibility tax credit, a qualifying individual may have only one principal residence at any time, but may have more than one principal residence in a tax year.

As HATC is inter-related with other non-refundable tax credits such as the medical expense tax credit, it might not be as straightforward as it appears to be; thus, it is strongly advised to discuss with a tax accountant before completing this part of tax returns.

CLAIMING HOME OFFICE DEDUCTIONS DURING COVID-19

As the COVID-19 pandemic shifts employees from their offices to their homes, many employees are left wondering whether they will now be able to deduct home office expenses from their employment income in their 2020 tax return.

Prior to the COVID-19 pandemic, an employee could claim home office expenses if they were contractually required to maintain a home office for which they were not reimbursed, and met **one of the following two conditions**:

- 1) The home office is the place where the employee **principally** (more than 50% of the time) performed their employment duties; or
- 2) The space is **used exclusively** during the period for the purposes of earning **employment income** on a **regular and continuous basis**, and for **meeting** customers or other persons in the ordinary course of performing employment duties.

Given that the COVID-19 pandemic has required many **to work from home**, many more will likely be eligible under provision 1) than in previous years. However, at question is whether the workspace must be the main place of work in the **context of the entire year or just a specific period**, such as the several months dictated by preventative COVID-19 measures. While the CRA has not yet provided their comment, the tax preparation community has been pushing for guidance in time for next tax filing season.

If qualifying under **provision 2)**, a problematic issue is the requirement for **regular and ongoing meetings**. CRA has stated that those meetings must be **in person**; many tax practitioners have noted that position is outdated and should include video and teleconference meetings as well.

A **portion** of household costs can be deducted, such as **electricity, heating, water, rent, security and maintenance**. If, and only if, the individual is a commissioned salesperson, a portion of **property tax** and insurance can also be deducted. **No employees** (neither commissioned sales persons nor regular employees) can deduct **mortgage interest or capital cost allowance**. Employees must also limit expenses to the amount of related income earned during the year.

When calculating the **deductible percentage**, a **reasonable** basis should be used, such as the area of the workspace divided by the total finished area (including hallways, bathrooms, kitchen, etc.). Expenditures that **relate solely** to the workspace and employment duties **do not have to be prorated**. Employees must also prorate based on portion of the day used for work during the year.

Given the potential costs of setting up a home office, the CRA has indicated that reimbursements to employees up to \$500 for computer equipment will not be considered a taxable benefit to employees, provided they retain supporting receipts. The CRA may further broaden this policy to include other types of home office equipment, although this remains outstanding. For example, if an employee purchases a laptop computer for \$800

and the employer reimburses the full amount, the employee would only be required to include a \$300 taxable benefit in their income. The employer, however, would generally be able to deduct the full \$800 reimbursement.

In addition, employees must obtain a completed **T2200 Form – Declaration of Conditions of Employment** - from their employer. It is expected these rules and interpretations will continue to change rapidly.

VIDEO CONFERENCING TIPS: Making it Look Professional

In an April 29, 2020 CPA Canada article, the author provided a variety of tips for **professional meetings** conducted by **online video conference**, which has become much more common during the COVID-19 pandemic.

Among the **tips discussed**, the author recommended the following:

- having a **meeting host** to own the meeting, set the agenda, and drive the meeting;
- setting **protocols** such as the **use of mute features** (whether by participants or the host) or **chat functions**;
- using the **waiting room** to avoid one client dropping in while another meeting is in progress;
- **framing the view** to control what participants see in the background; and
- **sharing screens** to more efficiently share information.

ACTION ITEM: Prior to providing video content or presenting virtually, review this article. As virtual communication will likely be a permanent fixture in the future, consideration should be given to investing in a reliable, quality web camera and microphone.

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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For any questions... give us a call.