CAUT Tax Guide 2008

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References to the Canadian Income Tax Act were added or amended by Roy Williams, LL.B., C.A., partner with Rheaume Williams Kalbfleisch.

References to the Quebec Income Tax Act were added or amended by Professor James Drew of HEC Montreal. Although every reasonable effort has been made to ensure the information contained in this guide is accurate and current, no individual or organization involved in either the preparation or distribution of this document accepts liability for its contents or for any consequences arising from its use. Readers of this guide should note that the material presented herein is for general information purposes only and is not intended to provide specific advice for all situations. The particular circumstances of any individual's tax situation must be taken into account. Accordingly, no action should be taken solely on the basis of the information provided herein. Professional advice should be obtained before embarking on any specific course of action.

INTRODUCTION

- All references are to the Income Tax Act (ITA) except as otherwise noted. In this guide, he/she refers to the taxpayer unless otherwise specified.

- In this guide the Canada Revenue Agency will be referred to as the CRA.

- Interpretation Bulletins (which are not technically binding on the government but which will probably be followed by it) as issued by the CRA, Taxation are referred to in this guide by the Department's issue number, i.e., 'IT-221R'. Quebec Interpretation Bulletins will also be referred to by the Department's issue number, e.g., "IMP.80-1."

- Because the Income Tax Act is a legal instrument, the results of cases tried before Canadian courts provide the final interpretation. For this reason we have included cases that we believe are relevant to situations faced by our readers.

- Because the Province of Quebec levies its own personal income tax, the figures in French quotation marks "« »" refer to the corresponding sections of the Taxation Act of the Province of Quebec. For constitutional reasons, there is no withholding tax levied by the Province of Quebec on the rental or other income of non-residents. Hence there are no corresponding sections in the Taxation Act of the Province of Quebec.

There is no treaty that binds the Province of Quebec with a foreign country. However, section 488 of the Quebec Taxation Act and Regulation 488R1 give effect in Quebec to the principles embodied in the treaties that Canada has signed. Consequently, income of non-residents exempted under a Canadian treaty will not be subject to Quebec income taxes.

WHAT'S NEW?

The February 26, 2008 and January 27, 2009 federal budgets tabled by the Conservative government introduced numerous income tax changes. Some of the proposals in the earlier budget have been enacted into law and other proposals are still making their way through the parliamentary process. The proposals in the latest budget will be passed as soon as possible given that it has been described as a stimulus budget. Furthermore, on November 27, 2008, the federal government released an economic statement that made several income tax changes. For the purposes of this paper, we will assume that all current proposals and budget announcements will be enacted into law. The more significant proposed changes of the two federal budgets and the November 27, 2008 economic statement were the following:

In 2008, the lowest tax bracket rate of 15.00% will apply to taxable income up to the threshold of $37,885. In 2009 this first tax bracket rate of 15% will apply to taxable income up to $40,726. This amount will be indexed for inflation in 2010 and later years.

The 22% federal tax bracket in 2008 will cover the range of $38,833 to $75,769 of taxable income and in 2009 this bracket will increase to a range of $40,727 to $81,452. The 26% tax bracket in 2008 will apply to taxable income in the range of $75,769 to $123,184 and will increase in 2009 to a range of $81,453 to $126,264. The 29% tax bracket will apply to taxable income over $123,184 in 2008 and $126,265 in 2009.

In 2008, the basic personal amount for individuals will be $9,600. This amount will increase in 2009 to $10,320 and be indexed for inflation in 2010 and future years.

There are also increases to the credits in respect of a spouse or a common law partner for the 2008 and 2009 taxation years. The credit in 2008 will be $$9,600 and in 2009 it will be $10,320. The 2009 credit will be indexed and adjusted annually in 2010 and future tax years. This credit will be reduced by spousal/common law partner income. There is no longer any threshold that will allow income to be earned by a spouse/ common law partner before there is a reduction in the spousal credit.

The most recent budget will increase in 2009 the tax credit for seniors 65 and older to $6,408 (from $5,276 in 2008).

The 2008 budget introduced a new type of account called the tax free savings account (TFSA). Any Canadian resident individual 18 years of age or older will be eligible to establish a TFSA. In 2009, each eligible individual will acquire $5,000 of TFSA contribution room each year. The initial $5,000 limit will be indexed for inflation in future years. Unused TFSA contribution room in one year can be carried forward to future tax years. If an individual withdraws an amount from a TFSA they will be able to contribute an equivalent amount in the future to their TFSA. Contributions to a TFSA are not tax deductible but any income earned within the TFSA is not subject to income tax. Withdrawals are also not subject to income tax. Essentially, the TFSA can hold the same types of qualified investments that an RRSP can hold. There is useful information on the federal government web site at tfsa@gc.ca.

The 2009 budget introduced a home renovation tax credit. Home owners with a dwelling that qualifies as a principal residence will be able to claim a 15% non-refundable tax credit for eligible expenditures that exceed $1,000 and do not exceed $10,000. This means that if a home owner spends $10,000 or more on eligible home renovation expenses they will receive a non-refundable tax credit of $1,350 ($9,000 @ 15%). This credit against income taxes payable will apply to eligible expenditures incurred between January 27, 2009 and February 1, 2010.

Expenditures resulting from agreements in place prior to January 27, 2009 do not qualify. A family may only claim expenditures for one principal residence.

Quebec is also offering a tax credit for home improvement and renovation work on a principal residence for 2009. The Quebec program differs from the federal program in several respects, including some of the eligible expenses. Purchase of a swimming pool, for example, is eligible federally but not in Quebec. The agreement must be signed with a contractor during the 2009 calendar year. The credit is refundable and is calculated at a rate of 20% of eligible expenditures over $7,500, to a maximum credit of $2,500. Renovations costing $20,000 or more are eligible for the maximum credit (Economic Statement by the Quebec Minister of Finance, January 14, 2009).

There are two new measures in the 2009 budget relating to new home purchases. First, the amount a first time home buyer can withdraw tax free from their RRSP's has been increased to $25,000 (from $20,000). The new limit will apply to withdrawals made after January 27, 2009. Second, there is a new non-refundable tax credit for buyers who acquire a home after the budget date of up to $5,000. An individual will qualify if they have not owned or lived in another home in the calendar year of the new home purchase or in any of the preceding four years. The credit can be claimed by the purchaser of the home or the purchaser's spouse or common-law partner.

The February 2008 budget increased the contribution period to an RESP to 31 years from 21 years. It also increased by ten years to 35 years the deadline for plan termination. There are additional time limits for beneficiaries of an RESP where the beneficiary qualifies for the disability tax credit. The contribution period in this case is increased to 35 years and the deadline for plan termination increases to 40 years. There is also more flexibility in the receipt of payments by a beneficiary of an RESP. Now a beneficiary can receive educational assistance payments out of an RESP for up to six months after ceasing to be enrolled in a qualifying educational program provided that the payment meets certain requirements for educational assistance payments. All of these changes apply to 2008 and future tax years.

Previously, the 2007 budget had eliminated the maximum annual registered education savings plan (RESP) contribution limit of $4,000 and increased the lifetime RESP limit from $42,000 to $50,000. The maximum annual RESP contribution qualifying for the 20% Canada Education Savings Grant was increased from $2,000 to $2,500 for 2007 and future years. The lifetime cumulative government credit of $7,200 has not changed.

Since 2007, Quebec has also had an education incentive grant program, called the Quebec Education Savings Incentive (QESI). It is similar to the Canada Education Savings Grant (CESG) in a number of ways. The parameters used equate to 50% of the CESG amounts; thus, the annual grant is 10% of $2,500 and the maximum total grant is $3,600.

The November 2008 economic statement provided some relief to individuals who must withdraw a minimum amount from an RRIF. The new rules reduce by 25 percent the minimum amount that an individual must withdraw from a RRIF in 2008. If more than the reduced minimum amount has already been withdrawn the excess amount above that reduced minimum amount can be re-contributed to the RRIF and a deduction from taxable income can be claimed. The deadline to re-contribute this amount is tentatively March 1, 2009 if the proposal has been enacted in law The intent of this change is to provide some relief to those seniors who have been negatively impacted by the decline in the value of the stock market.

The 2008 budget confirmed that Registered Disability Savings Plans will start in 2008. An individual eligible for the disability tax credit, or a parent or legal representative of a disabled individual is permitted to establish a plan. Contributions to this plan are not deductible and income earned in the plan is not taxable. There is a lifetime maximum of $200,000 for the disabled beneficiary of the plan. There is no annual limit on the contributions and contributions can continue until the disabled beneficiary reaches age 59. There are additional details for these plans that include the matching rates of contributions by the government based on family net income. The 2008 budget indicated that the government will review this program three years after the plans become operational.

The 2009 maximum annual employment insurance contribution will increase from $711 in 2008 to $732 in 2009. (and from $571 to $584 for Quebec employees because of the Quebec Parental Insurance Plan (QPIP)). Employees contribution to the QPIP will increase from $272 in 2008 to $300 in 2009. For self-employed individuals the premium will increase from $484 in 2008 to $533 in 2009.. The maximum will be paid when the total salary or business income will be $$60,500 in 2008 ($62,000 in 2009)

The maximum annual employer and employee Canada Pension Plan contributions for 2008 will be $2,049.30 and increase to $2,118.60 in 2009. The increase will be the same for the Quebec Pension Plan.

2009 Automobile deduction limit: In 2009, the limit on tax exempt allowances paid by employers to employees is $0.52/km for the first 5000 kilometres driven and $0.46/km for each additional kilometre (2008 rates were the same). Additional amounts apply to designated northern areas such as Yukon, Nunavut and NWT.

RRSP contribution limits will continue to increase at their previously stated rates. The maximum available limit is $20,000 for 2008, $21,000 for 2009, $22,000 for 2010 and indexed thereafter. The January 2009 budget proposes some relief for RRSP and RRIF losses after the death of an individual. Normally, the amount in these accounts will be included in the income of the deceased in the year of death. Any increase (not decrease) in the value of these accounts after the deceased's death is taxed to the beneficiaries. The budget proposes to allow post death losses in these accounts to be carried back and deducted against the income inclusion that occurred in the deceased's year of death.

The small business rate of tax for corporations remains at 11.0% for 2008 and future tax years. However, the January 2009 budget increases the amount of active business income earned by a small business corporation by $100,000 to $500,000 from $400,000. These rate changes will be prorated for small businesses with non-calendar taxation years.

The January 2009 budget also proposes a 100 percent depreciation rate for eligible computers and software acquired after January 27, 2009 and before February 2011. Any eligible additions will not be subject to the usual one half rate of depreciation relating to additions.

DISTINCTION BETWEEN BUSINESS AND EMPLOYMENT INCOME

The Income Tax Act contains no statutory definition of 'income' although section 3«28» does list the basic rules for computing a taxpayer's income for a taxation year. The Act distinguishes the various sources of income. The most important distinction for the majority of university teachers is that applied to income from an office or employment in contrast to income from a business or profession.

The distinction between an employee and a self-employed individual is a question of fact. The tests developed by the courts to determine the nature of the relationship are:

- Control test — the degree of control over not only what is to be done but also how it is to be done. In the case of professionals or the highly skilled, control over how the work is performed is often difficult and therefore this test is not in itself conclusive;
- Integration or organization test — whether the individual is part and parcel of an organization such that his/her work forms an integral part of its overall business;
- Economic reality test — an individual is less likely to be an employee if he bears risk of loss or has a chance of profit;
- Specific result test — an individual who is engaged to ensure his/her services are generally at his/her employer's disposal is more likely an employee than one who is engaged to ensure completion of specific work.

Based on these four tests, the court will look at the overall picture to determine if the person is an employee or an independent contractor.

Among the other factors considered by the courts are whether the other party considers them to be independent and indicates this by a formal contract, service is also provided to others, remuneration is related to performance, payment is by invoice including GST, provision of equipment is by the contractor, an absence of benefits, and independence in how, where and when the work is done.

The leading case in this area is the Federal Court of Appeal decision in the Wiebe Door Services Ltd. case. The court stressed that no one test is likely to prove adequate to all situations. The court stated that all the relevant factors must be weighed. This decision appears to give the courts considerable latitude to weigh all the factors.

A case decided by the Federal Court of Appeal in 2002 (Wolf) appeared to move the tests to more favourable ground for an individual attempting to claim independent contractor status. The decision suggests that where an employer wishes to have no liability toward a worker other than for the price of work, the contract should be generally characterized as a contract for services.

A recent case decided by the Federal Court of Appeal in 2006 held that dancers with the Royal Winnipeg Ballet were independent contractors and not employees. The Federal Court of Appeal overturned the Tax Court of Canada decision that had determined the dancers to be employees on the grounds that the dancers and the Royal Winnipeg Ballet acted consistently with their understanding that the dancers were in fact independent contractors. The element of control by the Royal Winnipeg Ballet was considered not to be inconsistent with the parties' understanding that the dancers were independent contractors.

CRA's guide RC4110 entitled "Employee or Self Employed" discusses this situation. This guide has attempted to formalize the distinction between an employee and a self-employed individual. Readers should be cautioned that this reflects CRA's views and assessing policies.

IT525R and IT504R2 are CRA's Interpretation Bulletins dealing with performing artists and visual artists and writers respectively. In Quebec, Bulletins IMP 80-3R4 and IMP 80-5R4 are dealing with the same subjects.

Employment income is the teacher's salary or other remuneration received for the performance of duties arising from his/her 'contract of service' as set out in sections 5 and 6 «32-33», «36-46». Section 8«59-79» describes the expenditures which may or may not be deducted from employment income. Employees' claims for deductions are specifically limited to those enumerated in this section (subsection 8(2) «59»).

Business income (section 9 «80-82») includes all remuneration received by a teacher for professional services rendered under a 'contract for services'. In order to be deductible from self-employment income, an expense must first pass the following general tests: it must be an outlay to earn income (other than exempt income); it cannot be a capital outlay and must be reasonable under the circumstances. There are specific restrictions on the ability to claim meals, automobile lease payments, interest on money borrowed to acquire an automobile and expenses incurred for certain offences under the Criminal Code.

A teacher may find it advantageous to consider the distinction between these two sources of income, as described below, because of the significant differences in the types of deductions that are allowable.

In the case of income from an office or employment, only a restricted list of statutory deductions is permitted, whereas the recipient of business income may generally deduct any reasonable expenses, other than payments on account of capital, which were incurred for the purpose of earning the income. Amortization of capital costs (depreciation) is usually deductible against business income, as provided by the Act.

When business income is earned, it may be easier to deduct amounts paid to an assistant, including payments to family members. Such payments must be reasonable, considering the expertise of the recipient and the time allocated.

EMPLOYMENT INCOME

A teacher's salary received for teaching and administrative duties is normally classified as income from employment. To this must be added fringe benefits, which represent additional or supplemental remuneration from employment. Fringe benefits are generally non-cash emoluments.

The Fries case settled before the Supreme Court in 1990 established that strike pay is not taxable even if the recipient is picketing. Payment for other services provided to the union as an employee or consultant is, however, taxable.

A 2005 technical opinion issued by the CRA followed the Fries case and ruled that a retirement gift provided from union funds by a union to a member of the union is not income from a source and not taxable under the Income Tax Act. An important qualification to this ruling was that the gifts were assumed to be in the hundreds of dollars and if the gift were to be more significant the CRA might attack the deductibility of the union dues because the expenses were not made to cover the ordinary operating expenses of the union.

Interpretation Bulletin IT-470R (consolidated) enumerates the various common types of fringe benefits and indicates whether or not the value thereof should be included in the employee's income.

Fringe Benefits Included in Income

Examples of fringe benefits that must be included in income are as follows:

- Allowances for personal or living expenses received from his/her employer.

- The value of the benefit received through an employee's personal use of an automobile owned or leased by his/her employer. The automobile standby charge is 2% of the original cost per month in the case of an employer owned automobile and 2/3 of the annual lease costs in the case of employer-leased automobiles. An adjustment is permitted if the personal use of the automobile is less than 20,000 kilometres per annum and the actual business use is greater than 50%. The personal portion of operating costs is a separately calculated benefit, based on the personal kilometres driven multiplied by 24 cents (2008) per kilometre. In cases where personal use is less than 50%, the operating cost benefit can be calculated using 50% of the standby charge instead of using 24 cents per kilometre.

- Wage loss benefits received out of a sickness or a disability insurance plan maintained by the university. Benefits received from such a plan will not be included in income as long as an employer has not made any contributions to the plan, however small. (Consult IT-428 for further details).

- Where an employer provides a house, apartment or similar accommodation to an employee rent-free or for a lower rent than the employee would have to pay someone else for such accommodation, the employee receives a taxable benefit.

- Where an employer pays for a vacation for an employee and/or his family the cost of the vacation will be a taxable benefit to the employee.

- Premiums paid by the University for Group life insurance.

- Imputed interest on interest-free and low-interest loans made by an employer to an employee in certain circumstances. If an employee moves to a new house at least 40 kilometres closer to his/her new location, the benefit may be reduced. The abatement will be equivalent to the amount that would have corresponded to this benefit if the loan had been a $25,000 no-interest loan for a five-year period from the date the loan was extended.

- Remission or waiver of tuition fees provided by an educational institution to its staff members (unless the course was undertaken by the staff member for the benefit of the employer) or their spouse and children. Where a dependent obtains a scholarship on a non-preferential basis the benefit is taxable in the hands of the recipient rather than the employee (scholarships are no longer included in taxable income). Recently, the CRA provided the CAUT with further clarification of the conditions required to have the scholarship taxable to a dependent child. An important component of any scholarship plan available to a dependent child is that the merit of the dependent prevails rather than the member's relationship with the employer. To satisfy this requirement there must be objective selection criteria that focus on the accomplishments of the dependent (scholastic achievement) and there must be a limited number of scholarships provided by the employer so that most employees could not expect their dependents to be selected. There have been a series of 2008 court cases that have been decided in favour of the taxpayer where a child of an arm's length employee of a corporation has received a scholarship.

- Termination payments and amounts received as damages for wrongful dismissal are fully taxable in the year the amount is received. Where a portion of a settlement for wrongful dismissal is not related to damages for loss of office or employment, it will be treated as a non-taxable amount. Punitive damages might be an example of a non-taxable court award.

  However, a portion thereof may be transferred by way of a lump-sum payment to an RRSP or a Registered Pension Plan (RPP) as follows:

  - $2,000 for each year of service up to and including 1995 that an individual was employed by the employer or a related party; in addition

  - $1,500 for each year of service prior to 1989 that the employer's contribution to an RPP had not vested. These transfers must be made either in the year the payment is received or within 60 days after the end of the year and are over and above the normal RRSP contribution limits.

- Free or subsidized parking provided by the employer to the employee may be regarded as a taxable benefit by the CRA.

- Where an employer pays all or part of the premiums that an employee is required to pay to a provincial authority administering a provincial hospital insurance plan or provincial medical care insurance plan, the amount paid is a taxable benefit to the employee.

- Contributions to an "Eligible Funeral Arrangement." EFAs feature tax-free accrual of income.

- Non cash gifts or awards in excess of $500 per year including taxes. An employer can give an employee two non-cash gifts per year for a special occasion as well as two non-cash gifts per year in recognition of employment achievements. The total amount of the gifts for a special occasion cannot exceed $500 in the year. This limit also applies to the two gifts for achievement. Cash or near cash gifts like gift cards or gift certificates do not qualify for this treatment. If the gifts for a special occasion or achievement exceed $500 in value, the full fair market value of the gift(s) or award(s) are included in the employee's income. (See page 15 of CRA guide T4130) In Quebec, if the value of a gift exceeds $500, only the excess is included in income. No more than two gifts or awards totaling less than $500 qualify for tax-free status. Quebec does not limit to two the number of gifts or awards but the total limit is the same ($500). Also, Quebec accepts gift cards and gift certificates.

Fringe Benefits Excluded From Income

Examples of fringe benefits that need not be included in income are as follows:

- Transportation to the job in cases where employers find it expedient to provide vehicles for transporting their employees from pick up points to the location of employment at which, for security or other reasons, public and private vehicles are not welcome or practical. A part time teacher or professor may receive travel allowances or reimbursement of travel expenses free of income tax if their travel is more than 80 kilometres to a designated educational institution (See page 26 and 27 of CRA guide T4130);

- Employers' cost of providing recreational facilities for employees' use without charge or for a nominal fee if such services are nondiscriminatory. Where the employer pays the fees for an employee to be a member of a social or athletic club the employee is not deemed to have received a taxable benefit where the membership was principally for the employer's advantage rather than the employee's (See page 23 of CRA guide T4130).

- Where an employer is required under a provincial hospital insurance plan or provincial medical insurance plan to make contributions on behalf of its employees, the payment of these contributions does not give rise to a taxable benefit to the employee. Contributions to a private supplementary health services plan (including dental services) for employees as well as the value of benefits flowing from the plans does not result in a taxable benefit to the employee. (See page 22 of CRA guide T4130) Quebec considers these contributions as a taxable benefit, but this benefit can be claimed as a medical expense.

- Moving expenses paid or reimbursed to an employee under certain prescribed circumstances. Amounts paid to employees as a reimbursement of increased financing charges on the purchase of a new home and one half of payments in excess of $15,000, as compensation for a loss on the sale of a former residence will be taxable. (See page 20 of CRA guide T4130).

- Reimbursement of the costs of attending a convention where the employer requires an employee to attend in the line of duty associated with his/her employment.

- Employers' contributions to a wage loss replacement group plan for employees. Receipts from such a plan are exempt where the plan was funded completely by the employee.

- Certain consulting services provided to the employee, which, generally, are in the areas of mental or physical health, termination or retirement.

- Professional memberships fee reimbursement where the employer is the primary beneficiary of the payment.

- An allowance of up to $1,000 received by emergency service volunteers. In 2009, Quebec will index this amount. ($1025). Tuition fees paid for courses leading to a degree, diploma, or certificate in a field related to the employee's current or future employment responsibilities are not a taxable benefit where the employer is the primary beneficiary of the training. Where an educational institution provides tuition fees free of charge or at a reduced amount to an employee of the institution or to the spouse or children of the employee, the fair market value of the benefit will be included in the employee's income.

- In Quebec, if the employer pays or reimburses his employees for monthly Public Transit passes, this benefit is excluded from income.

Deductions Available to Employees

Section 8 «59-79» sets out the deductions that are permitted from employment income. Subsection 8(2) «59» contains the general limitation that, except as permitted by section 8, no other deductions are allowable.

Allowable deductions from employment income include the following:

- **Legal expenses** — an employee may deduct legal expenses incurred in collecting or to establish a right to salary (paragraph 8 (1) (b) «77») or retiring allowance (paragraph 60(o.1)«336(1)(e.1)») from an employer or former employer.

- **Teachers' exchange fund** — a single amount in respect of all employments of the taxpayer as a teacher, not exceeding $250, paid by him/her in the year to a fund established by the Canadian Education Association for the benefit of teachers from Commonwealth countries present in Canada under a teachers' exchange arrangement (paragraph 8 (1) (d) «79»).

- **Travel expenses** — incurred by an employee:

  - who is ordinarily required to carry on the duties of his employment away from his/her employer's place of business or in different places; and

  - who has a contractual obligation to pay travel expenses in the performance of his/her duties, for which he is not reimbursed.

  The employee must include form T2200 «TP64.3» signed by the employer with his/her return to support his claim for travel expenses.

  Relevant situations might arise where a teacher participates in an exchange program or is required to commute between two campuses of the same university or employer at his/her own expense (Paragraph 8 (1) (h) «63»). Expenses incurred for travelling from home to the place of employment are not deductible.

  If the use of an automobile is involved, interest and capital cost allowances (depreciation) may be included in the travelling expenses. These expenses are subject to a limit of $300 per month for interest and a maximum capital cost of $30,000 plus GST and PST. (Paragraph 8 (1) (j) «64») (IT-522R) (See "Automobile Expenses"). The deductibility of automobile lease payments is limited to $800 per month plus taxes. There is an additional restriction where the monthly lease cost does not exceed $800 but the capital cost of the vehicle exceeds the ceiling amount allowed by the CRA. GST and QST input tax credits are similarly restricted.

  It is clear that any regular fixed allowance paid to an employee must be included in his/her income; subject to a deduction for expenses related to actual mileage required by the employer.

The prescribed rate allowable in 2008 and 2009 by the CRA for mileage reimbursement by an employer is $0.52 ($0.46 after 5000 km) plus $0.04 for Yukon, Nunavut and NWT.

Employees may be eligible for a rebate of GST and QST paid on expenses incurred to earn employment income. To claim this rebate, the taxpayer must complete form GST370, (VD-358 for Quebec QST) "Employee and Partner GST Rebate" and attach it to his/her return.

- **Dues and other expenses of performing duties**

  - dues for membership in professional associations are not deductible from employment income unless the payment of the dues is necessary to maintain a professional status recognized by statute. The dues must also be payable on an annual basis. In a 1999 decision, however, the Federal Court of Appeal allowed a taxpayer's claim for Appraisal Institute of Canada fees, even though the activity of the Institute was not authorized by legislation. If membership is a necessary expense of earning employment income, the dues will be an allowable deduction therefrom (subparagraph 8(1)(i) «68a»);

  - faculty association fees qualify as union dues and are deductible from employment income (subparagraph 8(1)(i)(iv) «68b»). Professional and union dues deductions are deducted as non-refundable tax credits in Quebec;

  - office rent, salary paid to an assistant or substitute, or cost of supplies if required to be paid by the employee by his/her contract of employment (paragraph 8(1)(i); subparagraphs (ii) and (iii) «78»).

- **Contributions to a registered pension plan (RPP)** of amounts permitted under the terms of the registration of the plan. It should be noted that for defined benefit plans only, contributions in respect of pre-1990 years of past service during which the taxpayer was not a contributor to a pension plan may be deducted up to a maximum of $3,500 each year. For years of pre-1990 past service during which the employee was a contributor, the $3,500 limit is reduced by any contributions made in the current year to his/her registered pension plan. For example, in addition to his/her 2008 RRSP limit, an employee may deduct up to $3,500 in respect of a pre-1990 year of service in which the employee had made no contribution to a defined benefit plan. Undeducted past service contributions are carried forward indefinitely, so that if an employee is already making $3,500 per year of current service contributions, he/she will not begin to deduct the past service contributions for years while he/she were a contributor until he/she retires. He/she can then deduct $3,500 per eligible year (see "Pension Reform"). In Quebec, the maximum is $5,500 instead of $3,500.

  Supplemental plan arrangements for members at their allowable pension contribution limits have been established at some universities. These plans have special conditions attached to them and outline detailed procedures for the administration of such funds. Specific information about them ought to be obtained from those universities which have implemented such arrangements.

- **Registered Retirement Savings Plan Contribution** — the maximum available RRSP contribution increases to $20,000 in 2008 and $21,000 in 2009. A Pension Adjustment (PA) for those taxpayers who are members of a Registered Pension Plan (RPP) reduces these limits. The Pension Adjustment is reported on the T4 slip for an employee each year. The contribution limit for the current year is based on the taxpayer's earned income and pension adjustment as reported in the prior year.

  Taxpayers are permitted to carry forward unlimited unused contribution limits. Each year, the CRA calculates and reports the unused contribution limit on the Notice of Assessment.

It is worth mentioning that in addition to contributing to one's own RRSP, one may also contribute to an RRSP of which a spouse/common-law spouse is the beneficiary. However, the total contributions to all RRSPs in any one year cannot exceed the available contribution limit. This may be particularly advantageous if a spouse will be in a lower tax bracket when the funds are ultimately withdrawn from the RRSP. If one contributes to a spousal RRSP, any amounts withdrawn in that year or in either of the two following years will be included in the contributing spouse's income, even if the funds are withdrawn from a different RRSP. The two-year time limit starts from the year a contribution was made, not the year in which the deductions were claimed (i.e., if one makes a contribution to a spousal RRSP in 2008, any amounts withdrawn from any spousal RRSP before 2011 will be included in the contributing spouse's income).

Those taxpayers in receipt of either severance or retirement allowances may make an additional contribution to their own RRSP over and above their normal contribution limits. An amount equal to $2,000 per calendar year of service up to and including 1995, and an additional $1,500 per calendar year of service before 1989 for which pension benefits have not vested, may be contributed to an RRSP. After 1995, no additional years will be included in calculating the amount. Readers are referred to IT Bulletin 337R4.

In practice, CRA's position is that if normal employee benefits continue to accrue after "termination," it is unlikely that employment has ceased even though the individual is not required to report to work. CRA's assessing policy is that payments that replace earnings of a statutory notice period are not for loss of an office. They suggest that such payments should be distinguished from those in recognition of long service or loss of employment and that no part of such payment may be made to an RRSP as an extra contribution. In some situations, individuals may be rehired soon after their retirement. A payment based on long service likely will qualify as a retiring allowance unless there is a firm agreement about subsequent employment prior to the retirement.

The Income Tax Act, subsection 110.2(2) «725.1.2», permits retirement allowances, pension income, and support payments that apply to prior years to be claimed in the year they relate to if they are in excess of $3,000 ($300 in Quebec) and for a period after 1977. The payer will be required to divide the payment by the year to which it applies. A refund will be calculated based on the difference between the tax in the year of receipt and the lower taxes which would have been payable at lower marginal rates in the prior years. Interest will be charged.

Self-administered RRSPs have become very popular. A wide range of investments may be made using funds in a self-administered RRSP, including Canada Savings Bonds and investments in privately held companies carrying on an active business (certain restrictions apply). Foreign publicly traded securities may also be held by an RRSP and are no longer subject to a 30% restriction based on the cost of the securities held by the plan.

On or after a marriage breakdown, a tax-free transfer of funds from one spouse's RRSP to the RRSP of the other/former spouse is permitted if both spouses are living separate and apart and the transfer is made pursuant to a court order.

RRSPs automatically mature before the end of the year in which the taxpayer turns 71. The taxpayer has a choice of transferring the funds to a Registered Retirement Income Fund (RRIF), purchasing an annuity or taking the balance as taxable funds.

Upon the death of a taxpayer, the balance of an RRSP or RRIF is taxable unless transferred to the RRSP or RRIF of a surviving spouse or to the deceased's financially dependant children or grandchildren.

RRSP/RRIF administration fees, which relate to the services provided by the RRSP/RRIF carrier rather than to the investments inside the plans, are not deductible. CRA has confirmed that the payment of administration fees and investment council fees inside an RRSP/RRIF will not be considered to be a benefit to the beneficiary. Administration fees paid outside the RRSP/RRIF will not be treated as additional contributions to the plan. It is generally preferable to pay RRSP administration fees outside of an RRSP so as not to reduce RRSP assets.

The rules governing payouts from RRIFs changed in 1993. These rules have been adjusted to comply with the 2007 change in the rule for the conversion of an RRSP at age 71 instead of at age 69. Additionally, the November 27, 2008 Economic Statement proposed that the new RRIF rules reduce by 25% the minimum amount that an individual must withdraw from a RRIF in 2008. This proposal was designed to provide some relief to individuals who have incurred a significant market drop in self directed RRIF's in the latter part of 2008. RRIFs acquired before 1993 can choose to maintain the original payout percentages until age 77. Thereafter, all RRIFs are subject to the same payout percentages. Since 1993, not all of the assets of the RRIF must be distributed by age 90. The new rules require that 20% of the total assets in the RRIF be distributed each year after age 94.

Individuals are permitted to have more than one RRIF. One may withdraw more than the minimum amount prescribed at any time, but one must withdraw at least the minimum amount. Payments may start at any time after the purchase of the RRIF but may not be delayed for more than one year following the creation of an RRIF. Obviously great care should be taken in deciding which option to choose when an RRSP matures. Among the factors to be considered is the need for protection of income flow and the desire to control withdrawals and investment risk.

The goal of the pension rules in place since 1990 has been to increase the tax-assisted savings limits for all types of pension plans. In particular, there has been an attempt to integrate more closely the pension benefits received under an employer-sponsored plan and an individual's RRSP. A Pension Adjustment calculation is prepared by the employer and reported on the employee's T4. The pension adjustment is based either on total contributions (both employer and employee) to the plan in the case of a money purchase pension or on the level of the benefit entitlement for a defined benefit pension.

Taxpayers are able to indefinitely carry forward unused RRSP contribution room. This means that if an individual does not have the funds to place in an RRSP in a given year, he/she will not lose that tax assistance, as was the case under the previous system. On the other hand, the taxpayer can make a contribution in a year (subject to the limits) and not claim the deduction until a later year when, for example, his/her income is taxed at a higher rate. Another provision allows an individual to contribute up to $2,000 in excess of his/her unused contribution limits. While the taxpayer does not get a tax deduction for the contribution, investment income thereon accumulates tax-free.

The $2,000 remains as a lifetime over contribution "cushion" for the taxpayer in the event that the calculations for the new rules result in the taxpayer exceeding his/her RRSP limits. Apart from the $2,000 "cushion," the rules impose a 1% per month penalty on excess contributions so careful use of the "cushion" is recommended. The CRA is now penalizing taxpayers if they contribute more than the $2,000 excess amount to their RRSP's in a taxation year. Timely withdrawal of these excess contributions is advised in order to reduce the penalties and interest charged by the CRA.

RRSP deduction room for the current year (2008) is calculated based on 18% of earned income from the prior year (2007) to a maximum of $20,000. The RRSP limit will increase to $21,000 in 2009, $22,000 in 2010 and will be indexed thereafter. The limit for the year is reduced by the amount of any PA (Pension Adjustment) for the preceding year.

In addition to the room for the current year an additional amount can be deducted for unused limits carried forward since 1991.

Taxpayers no longer have to track their own RRSP limits for the year as the Canada Revenue Agency (CRA) now advises each taxpayer of their eligible room on their Notice of Assessment. The amount includes the unused room from the prior year and new room created. In an effort to be helpful, the CRA also now indicates at the bottom of the same form contributions made but not yet deducted. This new information has led to great confusion on the part of many recipients who believe it allows for extra RRSP room. In fact, it only indicates the amount previously contributed toward the current year's limit.

For those who want to calculate their RRSP limits, it is important to know how to calculate earned income.

Earned income includes salary, taxable support, net rental income, net professional and business income, disability payments paid under CPP/QPP and income allocated from certain limited partnerships. This amount is reduced by employment expenses except the employee's contribution to his employer RPP, net rental losses, deductible support payments and professional, business or limited partnership losses.

For those individuals considering retirement, it should be noted that pension income and retiring allowances are not considered as earned income.

Starting in 1998 the government began applying the concept of "pension adjustment reversals" (PARs). This is a fairness concept which is designed to return contribution room to members of registered pension plans who have lost RRSP room due to pension adjustments based in part on employer pension benefits which for any number of reasons do not vest. Where, after 1996, an individual ceases to have entitlement to benefits under a pension plan, the plans administrator must report the PAR to the CRA beginning in 1998. The PAR will increase the RRSP contribution limit in the year of termination beginning in 1998.

The PAR is equal to the difference between the total of all Pension Adjustments reported on the employee's T4 and the commuted value of that pension at the time the employee's participation in the pension plan is terminated (usually by way of a direct transfer to an RRSP). If the employer had made vested contributions to a Deferred Profit Sharing Plan these payments will reduce the PAR calculation. This difference will be added to the employee's RRSP contribution room in the year their participation in the pension plan is terminated. PAR amounts are reported on a form T10.

Home Buyers' Plan

RRSP holders are allowed to borrow tax free up to $20,000 (the January 2009 budget has increased this amount to $25,000 for withdrawals after January 27,2009) of existing funds from their RRSP to buy a principal residence. Couples (including common-law spouses) can each withdraw up to $20,000 ($25,000 after the January budget date) for a jointly owned home if neither spouse previously owned a home. A taxpayer cannot put funds into his/her RRSP and then immediately borrow them to put toward a house. This program allows first-time home buyers to use RRSP funds to buy a house by October 1 of the calendar year following the year of withdrawal.

A taxpayer is deemed to be a first-time buyer if neither the taxpayer nor his/her spouse has owned a principal residence for at least the five calendar years preceding the date of withdrawal. The rules require that, to be eligible for a deduction for income tax purposes, funds deposited in an RRSP must remain in the RRSP for 90 days prior to withdrawal. Repayments of the withdrawn funds are to be in annual instalments of up to 15 years, beginning in the second calendar year following the calendar year of withdrawal. Repayments made in the first 60 days of a calendar year are allowed as repayments relating to the previous calendar year.

Where an individual has repaid all amounts previously borrowed under a Home Buyers' Plan and neither the individual nor their spouse has owned a home for a period of five years before they acquire another qualifying house, the individual will again be eligible to take advantage of the Home Buyers' Plan. In addition, an individual eligible to claim the disability deduction may make a withdrawal from their RRSP if the funds are used to enable the individual to acquire a home that is more accessible even if he is presently an owner of a qualifying home.

A person who is related to and supporting a disabled individual will also be able to use the Home Buyers' Plan to acquire a dwelling that is more accessible for the disabled individual to live in. See the CRA pamphlet RC4135.

RRSP Withdrawals for Education Costs

An individual or their spouse *is* permitted to withdraw a maximum of $10,000 a year or a cumulative maximum of $20,000 over four years, if the individual or their spouse is enrolled in full-time training or higher education for at least three months during the year. Disabled students will qualify if they are in part-time attendance. Amounts withdrawn must be repaid over a 10-year period commencing the year after the year in which the student was last enrolled full-time as a student or in the sixth year following the first withdrawal. Only a resident of Canada may make the withdrawals and any amounts withdrawn must be repaid within 60 days of becoming a non-resident. See CRA pamphlet RC4112.

- **Moving expenses** are deductible from the employment or business income where the taxpayer has moved at least 40 kilometres closer to a new job location. Moving expenses may include travel, transportation and storage of household effects, temporary lodging and meals, cancellation of a lease or the cost of selling the former residence, legal fees in connection with the purchase of a new residence and any taxes on the transfer or registration of title to the new residence if the taxpayer or his/her spouse has sold their old residence as a result of the move. Mortgage interest, property taxes and insurance premiums, and costs associated with maintaining heat and power in respect of a vacant former residence are deductible as moving expenses to a maximum of $5,000. The cost of revising legal documents to change one's address, replacing driver's licences and connecting or disconnecting utilities also qualifies for a deduction. In Quebec, if an employee receives an allowance to cover expenses incidental to relocation such as the cost of reconnecting telephone and cable services from his employer, this allowance is not taxable if it does not exceed an amount equivalent to two weeks of salary for the employee.

There is a time limit of 15 days in respect of temporary lodging and meals. (See Rev. Can. Tax pamphlet "Moving Expenses," IT 178R3, and form T1-M).

If the moving expenses are greater than the income earned at the new location in the year of the move, the excess may be carried forward and deducted from such income in the following year.

The general rule is that only moves within Canada qualify. However, a taxpayer who is absent from Canada, but a Canadian resident for tax purposes, is not subject to these "within Canada" requirements. There are certain exceptions for students. If a student changes residences to begin full-time attendance at an educational institution (whether or not it is in Canada), he/she may deduct expenses incurred in moving from the old to the new residence (at least one of which must be in Canada) if it results in he/she living at least 40 kilometres closer to the new institution. Such expenses may be deducted against award income such as scholarships, fellowships, research grants and similar awards and only to the extent that such income is reported in one's income tax return. However, such income can include part-time income earned in the new city, even if the primary purpose of the move was for educational reasons. If the student is married and the spouse takes up employment in the new centre, the spouse may claim costs of moving the family. Even if the taxpayer has too little income to need the moving deduction, he/she should still keep a careful record of the costs of moving since they reduce net income or taxable income, and many provincial tax credits (and child benefit payments) are calculated based on the net or taxable income.

Students who leave Canada to study or foreign students coming to Canada to study at post-secondary educational institutions are entitled to deduct moving expenses from scholarships, fellowships, research grants and similar award income. If one returns to Canada from attending a foreign institution as a full-time student in order to take up employment or to carry on business, one may not deduct the moving costs of returning to Canada.

Where the employee has started employment at the new work location, any reimbursement or other compensation provided to an employee in respect of the employee's financing of a residence *is* taxable. In addition, one half of any amounts paid in excess of $15,000, as compensation for the loss on the sale of the employee's former residence will also be taxable.

- Only the lower income spouse may normally claim **childcare expenses**. Higher income spouses may be eligible under certain circumstances, the most usual of which occurs where the lower income spouse is in full-time attendance at university or is physically or mentally incapacitated. Where one spouse is in part-time attendance, the higher income earner will also be able to deduct childcare expenses. The deduction is $7,000 for each eligible child under 7 years of age at the end of the year; or who has a severe and prolonged physical or mental impairment. For children over 6 but less than 16 at any time in the year the deduction is $4,000 each. The maximum annual amount of the child care expense deduction is $10,000 for children who are eligible to claim the disability tax credit. Costs of babysitting or day nursery services, lodging at a boarding school or camp qualify if they conform to the specified rules and are within the stated limits. Boarding school, residential summer camp or overnight sports school costs up to $175 per week is claimable for a child who is either under 7 years of age at the end of the year, $250 per week for a child who is severely impaired and $100 per week in the case of children under 16. Attendance at hockey and similar schools can also qualify.

  Since 1994, the childcare expense deduction in Quebec has been replaced with a refundable tax credit based on family income. This tax credit, the rate of which varies from 75% to 26% of eligible expenses, is subject to levels of net family income. In Quebec, daycare expenses are not deductible when the parent benefits from the $7 a day childcare program. However, these expenses are deductible at the federal level.

  Expenses must be for care in Canada and are deductible only for the year in which they were incurred and paid. Canadians serving abroad in the armed forces, in aid programs and at diplomatic posts are considered to be residents of Canada for tax purposes (subsection 250 (1) «8»). These parents, and others who have been deemed by the Income Tax Act to be resident in Canada in the year in which childcare expenses are incurred in foreign countries, are allowed to deduct childcare expenses on the same basis as a taxpayer actually resident in Canada. A teacher on sabbatical in a foreign country, although probably still considered to be a resident of Canada, is not deemed to be a resident under Subsection 250 (1) unless he/she fits one of the descriptions therein and will be allowed to deduct child care expenses only if the expenses are incurred in Canada. (See "Residency" and see CRA Tax Pamphlet "Child Care Expenses" and IT495R3).

- **Pension Income Splitting** — Effective January 1, 2007, Canadian residents may split up to one half of their eligible pension income with their spouse or common law partner. There is a definition of eligible pension income depending on the age of the individual. This is a tremendous opportunity for couples to split pension income on a tax effective basis.

- **Self-funded leave of absence** — Regulation 6801, exempts certain leave-of-absence arrangements from the salary deferral arrangement rules as provided under paragraph (1) of the definition of the term in subsection 248(1) of the Act. The regulation basically provides that for an arrangement to qualify as an eligible leave of absence and not be regarded as a salary deferral arrangement it must be in writing and provide that:

  - no more than 33.3% of the employee's salary may be deferred;

  - the purpose of the deferral must be to allow the employee to fund a leave of absence of not less than 3 months where the leave is to be in full-time attendance at a designated educational institution or 6 months for any other purpose and the leave commences no later than 6 years after the date of deferral;

  - throughout the period of leave the employee does not receive salary from his/her employer or a person related to his employer directly or indirectly (the employee may during the period continue to receive reasonable fringe benefits); and

· the employee must return to his/her employer after the period of leave for a period of time not less than the leave period. Note that contributions to the plan should be held in trust for the employee and interest earned on the funds is taxed to the employee in the year it is earned.

- **SME Growth Stock Plan (Quebec residents only)** — In 2005, a new investment stock plan replaced the old Stock Savings Plan (SSP). An individual residing in Quebec on the last day of the taxation year may deduct from his/her taxable income for Quebec purposes only, the cost of eligible stocks purchased during the year for a SME Growth Stock Plan. The allowable deduction will generally be the lesser of the cost of the stocks or 10% of his/her earned income. A particularly interesting feature is the permanent tax savings if the stocks are left in the Plan at least three years. Stocks will be eligible if they meet certain criteria and are issued by eligible corporations (eligible corporations are those with assets less than 100 million $). Stock certificates must be sent directly to a broker and held by him/her for safekeeping. Stocks issued by these corporations are eligible for a deduction equal to 100% of their purchase price.

- **Alimony** and Payments — Prior to 1993, alimony payments could be deducted if made pursuant to a court order or a written separation agreement as long as they were payable on a periodic basis. Maintenance payments (to a separated spouse or ex-common-law spouse) had to be under court order. The new definition of "spouse" (extended to include common-law partners of the same sex) does away with this distinction and common-law spouses no longer require court orders. It appears that a pre-1993 breakdown of a common-law relationship severed without court order cannot be retroactively validated under the new rules. If the same couple reunited after 1992 then split up, they could fall under the new rules. In Quebec, there is no maintenance obligation between members of a common-law relationship. This obligation is limited to spouses and direct-line relatives.

  Amounts intended for a former spouse under a separation agreement or court order are deductible to the payer and taxable to the recipient, provided they satisfy all of the criteria required by the Income Tax Act. If recipient spouses direct their alimony to a third party, they are still taxed on the payment as if they had received it. Careful attention should be paid to the specific statutory references in any court order or settlement.

  Child support payments made pursuant to a written agreement or a court order issued after May 1, 1997 are not taxable to the recipient or deductible to the payer. These provisions do not apply to pre-existing agreements or court orders prior to this date unless the agreement/court order is varied after May 1, 1997 or both parties jointly elect to have the new provisions apply. Note that these changes apply only to child support. Alimony/Maintenance payments for an ex-spouse are still taxable to the recipient and deductible to the payer.

  There is now some flexibility in the rule that informal agreements are not valid for the purpose of permitting deductions for alimony or child support payments. Written agreements will now include an exchange of correspondence between the parties or their solicitors provided the terms of the agreement are clear.

  Legal fees to establish the amount of support payments or to establish a right to alimony or maintenance are deductible (See IT 99R5 and CRA pamphlet P102). Costs of defending such an action, or of defending an action claiming increased maintenance payments, are not deductible. Also, the CRA will no longer be as strict in requiring that a court order or agreement recite the specific subsections of the Income Tax Act being relied on where previous support payments are being validated.

- **Home Office and Travel** (T2200, «TP64.3») — It is worth noting that a taxpayer may be an employee, but if he/she is not provided with an office by the employer and the employer so certifies on a form T2200 (Quebec, TP64.3), a room set aside in the employee's house and used solely for the purpose of earning income can be claimed as a home office. The employee can deduct a proportionate part of the rent or, if an owned home, he/she may deduct a reasonable proportion of maintenance costs (fuel, electricity, cleaning and minor repairs). Additional home costs can be claimed by commission sales agents. The T2200 form is also used if the employee is required to travel (e.g., between several work sites) as a condition of the employment contract and is not reimbursed for travel costs. (See also "Automobile Expenses").

- Those suffering from a severe and prolonged medical or physical impairment may deduct care expenses to attendants over 18. The deduction is limited to 2/3 of earned income in the year.

Other Deductions and Credits

As well as the above deductions from total income to arrive at net income, the ITA provides for certain other deductions to arrive at taxable income.

The most common is losses of prior years. Capital losses can be carried back three years and forward indefinitely while non-capital losses are restricted to twenty years of carry forward for a loss arising from a taxation year ending after 2005 and the same three year carry back.

Once taxable income is determined, the total tax payable can be calculated based on the federal marginal rates of tax and the rates of tax for the province of residence at year end.

Deductions are allowed for foreign taxes paid, the dividend tax credit and certain “non-refundable tax credits.”

This last group of credits covers amounts in respect of the taxpayer and his/her spouse. Spousal credits depend on the spouse having relatively low net income.

There are also credits allowed for the following items:

- Credit for infirm dependants.
- CPP (QPP), EI and QPIP contributions paid.
- Pension income up to $2,000. In Quebec, the credit is $ $1,500 and will increase to $2,000 also in 2009..
- Certain disability amounts.
- Tuition and education amounts. The education credit is $400 per month for full time students and $120 per month for part-time students. Part-time students entitled to claim the disability credit may claim the $400 per month education credit. In Quebec, only the tuition fees are deductible as a credit. There is an additional textbook credit in 2006 of $65 per month for full time students and $20 per month for part time students.
- Certain amounts transferred from a spouse.
- Public transportation expenses.
- Children fitness expenditures.
- Child tax credit.

- Medical and caregiver expenses.

- Charitable donations and political contributions. There are some very significant tax savings which can result from donations of items such as library collections and stock portfolios. If one is contemplating large gifts to charitable organizations, either at death or currently, professional advice should be sought.

- Employment credit. Like other tax credits, this is indexed annually and is available to all employed individuals. In Quebec this credit is replaced by a deduction in the net income calculation, and both employees and self-employed workers are eligible for the deduction.

Most of these credits are subject to limits and restrictions. Those allowed for medical expenses and disability claims are frequently updated in an effort to recognize new treatments and methods of delivering services. CRA makes information available through their publications and telephone advice at District Taxation Offices.

SCHOLARSHIPS AND GRANTS

Scholarships, Fellowships, Bursaries and Prizes

The ITA does not define the terms "fellowship", "bursary," "scholarship," "prize" and "research grant." However, Interpretation Bulletin IT-75R4 contains the Department's descriptions of these awards and its view of their treatment under the Act. The name applied to any specific grant may not be indicative of its true nature. For instance, in some circumstances an award bearing the title "fellowship" may be classified as a "research grant" for tax purposes (IT-75R4, paragraph 11).

There is now a full exemption in subsection 56(3) «312g» for the total of all amounts received during a year in respect of scholarships, fellowships, bursaries and prizes. The 2007 budget extended this exemption so that for 2007 and subsequent taxation years, an individual can now exclude the total of amounts received by the individual on account of scholarships and bursaries in connection with the individual's enrolment in an elementary or secondary school. If the grantee spends the award money "in the production of a literary, dramatic, musical or artistic work," then in calculating the taxable amount, the grantee can deduct from the awards all outlays made to qualify for the award, up to the amount spent in the production. The eligible outlays do not include personal living expenses or reimbursed or tax-deductible amounts. Effective 2001, scholarships and fellowships in Québec are no longer taxable. But the taxpayer has to include them in their (net) income and deduct them from taxable income.

Teachers and students are reminded that in some situations both moving and childcare expenses may be claimed as a deduction if they are in receipt of certain types of grants (sections 62 and 63 «347-356»).

Research Grants and Expenses

As mentioned above, only the aggregate of the bursary type awards received in a year is eligible for tax free treatment. In contrast, awards deemed to be research grants for tax purposes must be declared as income to the extent that they exceed allowable research expenses incurred (paragraph 56(1)(o) «312H») and the subsection 56(3) exemption is not applicable in this case. Personal or living expenses such as meals and lodging are normally not allowable but may be deducted when they become part of travelling expenses incurred in carrying on research away from home.

CRA has now expressed its view of what can be considered a research grant. If the primary purpose of the grant is to enable the recipient to further his/her education/training, then the grant will be considered a fellowship and the expenses not deductible. If, on the other hand, the primary purpose of the grant is to enable the recipient to carry out research for the sake of a novel proposition, then it will be considered a research grant. IT-75R4 also states that where there are two purposes, as long as the primary purpose is for research (as explained above) then the grant will be treated as a research grant. Where it is difficult to establish a primary purpose, CRA's policy will be to leave the determination of the primary purpose to the grantor — the university.

In this regard, it is important to note that in the past Revenue Quebec reassessed certain recipients of university research grants from universities in Quebec on the basis that they were in receipt of employment income notwithstanding the funds were described as research grants. This logic is the basis of IT-75R4 paragraph 23, which states "individuals (such as university faculty members) whose duties of employment include research responsibilities are not entitled to treat a portion of their regular salary as a research grant when they engage in the type of research work ordinarily expected of them under their terms of employment."

Fellowships are similar to scholarships and bursaries in that they are amounts given to an individual to enable him/her to advance his/her education. However, the recipient is generally a graduate student. Fellowships are normally treated as income and taxed pursuant to paragraph 56(1)(n) and subsection 56(3). A fellowship can sometimes be included as a research grant and taxed pursuant to the rules in paragraph 56(1)(o). The treatment of the fellowship will depend upon the primary purpose for which the fellowship was granted.

A researcher is entitled to claim his/her traveling expenses:

- between his/her home and the place at which he/she temporarily resides while engaged in the research work;
- from one temporary location to another; and
- on field trips connected with his/her work (IT-75R4, paragraph 33).

The view of CRA is that the travel expenses of a researcher's spouse and dependants are not deductible from a research grant. Though the Federal Tax Court has not decided this question, CRA has reassessed a number of taxpayers disallowing these deductions.

Expenses may include not only current expenses but also expenditures of a capital nature (IT-75R4, paragraph 35).

Individuals on sabbatical within Canada should explore the possibility of their right to deduct moving and childcare expenses. Hotel expenses while seeking a more permanent abode should be included, as well as any other expenses directly associated with the project, such as the cost of research assistance, typing, photocopying, preparation and publication of reports and other relevant expenses other than personal or living expenses. An individual on sabbatical should not assume that salary received while on sabbatical qualifies as a research grant. Professional advice should be pursued to determine the tax treatment of amounts received on sabbatical.

Receipts for research expenses are not required to be filed with the taxpayer's income tax return. However, since an accounting may be demanded at any time, the researcher should keep a diary of all his/her eligible expenses supported by receipts where practical.

Normally, expenses incurred in a year prior to or subsequent to the receipt of a research grant are still deductible but the total expenses cannot exceed total research grant money received. An exception pertains to expenses arising in the year prior to the receipt of the grant and before notification that the grant has been awarded. In this particular circumstance the expenses may not be carried forward. Research expenses incurred more than one year before or more than one year after the year in which the grant is received are not deductible from that grant. (IT-75R4, paragraph 34).

Although eligible research expenses may be deducted from a research grant, they are not deductible from sabbatical salary or from a fellowship, unless, of course, the fellowship is deemed to be a research grant. Nor may any portion of such expenses be deducted from sabbatical salary.

Registered Education Savings Plan

A Canada Education Savings Grant (CESG) equal to 20% of the first $2,500 of contributions to a Registered Education Savings Plan (RESP) will be paid directly to the carrier of the RESP. In 2008, there is an additional CESG rate on the first $500 contributed to an RESP for a beneficiary who is a child under 18 years of age where the child's family has qualifying net income less than certain threshold amounts. If the child's family net income is less than $37,885, the enhanced CESG rate on the first $500 on RESP contribution is 40% and if the child's family net income is between $37,885 and $74,769 the enhanced rate is 30% on the first $500 of RESP contribution.

There is no longer a $4,000 annual contribution limit to an RESP for each beneficiary. The lifetime limit has been increased to $50,000. Neither the grant nor the investment income earned on the grant will be included in the beneficiary's income until such time as they are paid to the beneficiary. The grant is available each year until the beneficiary attains the age of 18. The total grant available is cumulative in that if the maximum grant is not received in one year, the unclaimed portion of the grant can be recovered in subsequent years based on subsequent contributions to the RESP.

A beneficiary cannot receive more than the maximum grant of $7,200 ($400 x 18 years) as a result of being a beneficiary under more than one RESP. If an individual is a beneficiary under more than one RESP, the beneficiary will have to repay any grants received in excess of the maximum allowed on his/her tax return. Similarly, if a beneficiary under an RESP does not pursue his/her education, the grant must be repaid. If all the intended beneficiaries are more than 21, not pursuing their education and the RESP has been in existence for at least 10 years, the contributor will be allowed to transfer up to $50,000 of the accumulated income from the RESP to an RRSP to the extent the contributor has unused contribution room available. Otherwise, the contributor will be taxed on the income withdrawn at normal marginal rates plus a special 20% tax on the amount received. If the individual is taxable in Quebec, the special tax will be split this way: 12% payable to the federal and 8% payable to Quebec.

Where an individual less than 21 replaces a beneficiary under an RESP and both are related to the RESP contributor, contributions in respect of the first beneficiary will not be counted in determining the contribution limits for the second beneficiary.

Since 2007, Quebec has also had an education incentive grant program, called the Quebec Education Savings Incentive (QESI). It is similar to the Canada Education Savings Grant (CESG) in a number of ways. The parameters used equate to 50% of the CESG amounts; thus, the annual grant is 10% of $250, or $250, and the maximum total grant is $3,600. In addition, Quebec offers a higher rate on the first $500 for low and middle-income families.

SABBATICAL LEAVES

Only the Canadian income tax aspects of sabbatical leave allowances will be dealt with in this section of the tax guide. A teacher on a sabbatical or leave of absence in a foreign country must consider the income tax implications of the foreign jurisdiction as well as those of Canada. Some of the foreign tax problems will be described in later sections of the guide.

Residency

A Canadian resident is subject to Canadian Income Tax on his/her world income whereas a non-resident is only subject to Canadian Income tax on certain Canadian source income. The question of whether or not one is resident in Canada for tax purposes is therefore an important determination for an individual.

IT-221R3 deals with residency. There is no longer a presumption of non-residency where an individual is outside Canada in excess of two years. A non-resident must establish the severance of all residential ties on leaving Canada. There must be no evidence that a return to Canada was foreseen at the time of departure (i.e., by way of employment contract).

Dwelling Place — "Where an individual who leaves Canada keeps a dwelling place in Canada (whether owned or leased), available for his or her occupation, that dwelling place will be considered to be a significant residential tie with Canada during the individual's stay abroad. However, if an individual leases a dwelling place located in Canada to a third party on arm's length terms and conditions, the CRA ….may not consider the dwelling place to be a significant residential tie with Canada….."

Spouse and Dependants — "If an individual who is married or cohabiting with a common-law partner leaves Canada, but his or her spouse or common-law partner remains in Canada, then that spouse or common-law partner will usually be a significant residential tie with Canada during the individual's absence from Canada. Similarly, if an individual with dependants leaves Canada, but his or her dependants remain behind, then those dependants will usually be a significant residential tie with Canada while the individual is abroad." Legal separation is, of course, an exception.

Personal Property and Social Ties — "An individual who leaves Canada and becomes a non-resident will not retain any residential ties in the form of personal property (e.g., furniture, clothing, automobile, bank accounts, credit cards, etc.) or social ties (e.g., club memberships, etc.) within Canada after his departure."

Other Residential Ties — other ties that may be relevant are the retention of:

- provincial hospitalization and medical insurance coverage;
- a seasonal residence in Canada;
- professional or other memberships in Canada (on a resident basis); and
- receipt of the child tax benefit.

Overseas Employment Exemption

Employees of Canadian employers working overseas in prescribed countries for more than six consecutive months may be partially exempt from tax (ITA section 122.3). An employee may be granted an income tax reduction of up to 80% of his/her overseas remuneration. This credit is based on the lesser of 80% of the actual remuneration or a maximum of $80,000, which is prorated if the employment period is less than a year. This applies to persons working on construction, installation, and agricultural or engineering projects, in resource exploration and development or other prescribed activities. Each international development assistance program of the Canadian International Development Agency financed with funds (other than loan assistance funds) provided under a vote providing for such financing, is prescribed as an international development assistance program of the Government of Canada. Subject to the publication of the regulations outlining these prescribed activities, teachers employed by universities and working abroad would appear not to be exempted under this provision. For purposes of Quebec income tax the eligible person will be totally exempt after residing one year abroad. If the stay is less than a year, there will be a deduction proportional to the number of completed months worked abroad. The deduction is admissible even if the length is less than six consecutive months.

Research Expenses during Sabbatical

A university teacher who plans to carry on research during sabbatical leave should confirm that his/her affairs will permit the teacher to claim research expenses. This will depend on the status of the teacher during the sabbatical leave. Such arrangements will be related to residency status as determined by the guidelines in IT-221R3, as discussed above.

Sabbaticals (Residents of Canada)— If a teacher on sabbatical leave remains a resident of Canada for income tax purposes, it does not matter whether he/she actually stays in Canada or emigrates temporarily to a foreign country. In either case, he/she will be taxed by Canada on his/her world income. If one is obliged to pay foreign income taxes on any part of world income, Canada will normally permit a foreign tax credit for all or part of the foreign tax. As has been pointed out under "Research Grants" above, the teacher may deduct eligible expenses only from research grants and not from employment income.

Sabbaticals (Non-Residents of Canada) — Non-residents are subject to Canadian income tax only on income received from sources within Canada. For most teachers the three main classes of Canadian source income are:

1. sabbatical salaries, business or professional income, research grants, fellowships, etc.;
2. investment income, capital gains, and
3. rental income.

A taxpayer must file an individual income tax return in respect of the income included in class (1) above (IT-75R4, paragraph 42). Non-residents are allowed to claim personal credits only where substantially all (90%) of their income for the year from all sources is income from employment in Canada, a business carried on in Canada, or Canadian scholarship and research grants. This limitation was broadened to allow credits such as medical expenses and certain other credits where there are certain additional types of income as specified above (section 115).

Leaves of Absence Taken Abroad

Sometimes teachers accept teaching or other assignments in foreign countries under which most of their income will be from sources outside Canada. If the teacher remains a resident of Canada he/she must declare and pay tax on world income. If one establishes non-resident status they are then taxable in Canada only upon income from sources within Canada. One may, however, become taxable on part or all of his/her world income in the new country of residence.

Before jumping to conclusions regarding the advantages and disadvantages of non-resident status, the taxpayer must consider his/her tax position in the foreign country as well as in Canada. A resident of Canada is entitled to a credit for income taxes paid to foreign countries. This credit will generally be the lesser of the foreign tax paid and the Canadian income tax otherwise applicable to the foreign income. The credit is available only to residents of Canada and could not be claimed by a non-resident paying tax pursuant to Section 115 «1087-1094». Other considerations include departure tax and provisions of relevant tax treaties. Readers are advised to consult their tax advisors.

A taxpayer who plans to temporarily abandon Canadian residency should consider the right to claim a tax credit for Canadian income taxes under the tax laws of the new country of residence. This will become an issue only if the foreign country taxes visiting teachers.

BUSINESS INCOME

Many teachers provide service as independent contractors for their universities or for other institutions under a contract for services (not an employment contract), which does not give rise to income from employment. Aside from his/her regular salary, a teacher may derive income from royalties, consulting fees, writing, lectures, appearances on television or radio, all of which are usually classified as income from a business or profession. In computing taxable income, the teacher may deduct such expenses as are allowable from business or professional income. Such individuals will need to become familiar with the GST rules, which may apply to this business activity.

GST Rules

The GST is designed as a tax on the final consumer although it is imposed on a multi-stage basis. Therefore, each registrant (which in very general terms is anybody delivering a good or service) charges GST at the rate of 5% on the goods or services it sells and pays GST on the goods or services it buys for which it will claim an input tax credit. The registrant remits the net amount to the government.

The "small supplier" provision in the legislation gives a business generating less than $30,000 of taxable sales (GST is included in the sales amount in order to fall below the $30,000 sales threshold) the right to choose whether or not to register. The principal advantage of registration is the ability to claim a credit or refund for the GST on purchases used in the business. While the business, if registered, also has to charge GST on its sales, this should not be disadvantageous where the sales are to another registrant who will be entitled to receive a credit for the tax charged.

The main disadvantage of registration is that records have to be maintained and periodic returns filed which may prove costly in either time or professional fees. Much of this cost would be required in any event to calculate the net income for income tax purposes.

The "quick method" of filing allows a registrant to keep the GST collected on sales and remit the GST using a fixed percentage of sales including GST and claim any input tax credits on capital outlays. (Note that GST on capital items purchased will always be refunded regardless of the filing method chosen.) Qualifying small businesses can file once a year rather than quarterly. Qualifying businesses include manufacturers, retailers and service companies with annual sales under $200,000, but do not include legal, accounting, financial consulting businesses, charities or not for profit organizations with at least 40% government funding in the year. The fixed percentages range from 1.8% for retailers and wholesalers, to 3.6% for manufacturers and services. In calculating the net tax using the quick method, a registrant is entitled to a 1% credit on the first $30,000 of eligible sales (supplies). These rates are for the Federal GST only; different rates may apply in Quebec and the Maritimes.

Quebec has harmonized its provincial sales tax with the federal GST and imposes a provincial sales tax (QST) of 7.5% on goods and services. This tax is based on the selling price plus the 5% GST for a combined rate of 12,875%. The Maritimes (New Brunswick, Nova Scotia and Newfoundland have also harmonized their provincial sales tax and they impose a 13% HST (combined GST / PST and previously 14%).

All music lessons, regardless of the level taught, are considered "educational services" and are therefore GST exempt. Tutoring is tax exempt as an "educational service" as long as the tutoring follows a school curriculum. Otherwise, GST must be charged. GST paid on books by libraries and educational institutions, previously partially refundable, is now 100% refundable.

Most medical services provided by health care professionals are exempt. Suppliers of medical services do not charge their patients but cannot claim back GST paid on inputs either. Those professionals whose spouses own a corporation should review their activities since wages paid directly by them are exempt whereas charges to them by a service corporation attract GST, resulting in an additional cost to the professional as a taxpayer.

Charities registered for income tax purposes are generally exempted from charging GST, although this does not extend to activities commercial in nature.

Charities are also given a 50% rebate for GST paid on purchases for non-commercial use and an application for refund can be made on a prescribed form. Receipts need not be filed but should be retained in case of a later audit.

In addition to routine teaching duties, a teacher may teach special courses in summer or night programs or in graduate school. Whether a contract of service (an employment contract) or a contract for services (a business contract) exists will depend on the facts of each case. Special teaching services are often performed under an employment contract, particularly where the subjects are taught under the same conditions and discipline as apply to courses in the regular curriculum. This would mean that remuneration for these services would be reported on a T4 and taxed as employment income.

Contract for Services

In some circumstances, the teaching of non-credit courses may be performed under a non-employment arrangement. Some of the factors that provide evidence of a contract for services for the teaching of non-credit courses are as follows:

- A contract of service (employment) generally exists if the person for whom the services are performed has the right to control the amount of work, the nature and the direction of the work to be done and the manner of doing it. A contract for services (non-employment) exists when a person is engaged to achieve a prescribed objective and is given all the freedom he/she requires to attain the desired result (Interpretation Bulletin IT-525R, paragraph 3).

- Under a contract for services as an individual contractor, the teacher's discretion and responsibility for expenses incurred by him/her in providing the services should be clearly defined in a formal contract or exchange of correspondence.

- The employment of the services of others by a teacher in carrying out his/her contractual obligation is evidence of a contract for services.

- A contract for services may be implied where a teacher supplies services to more than one university or institution.

It may also be helpful to examine the four tests discussed earlier in this guide (see DISTINCTION BETWEEN BUSINESS AND EMPLOYMENT INCOME).

Some universities enter into separate contracts with teachers for the above-mentioned supplementary services. Where a university pays for such on an invoice through accounts payable or reports the income on the T4A «Relevé 2» form rather than on the T4 «Relevé 1», such practice provides evidence that the university does not consider the remuneration to be employment income. In addition, the university should not withhold any income tax, CPP «QPP», Employment Insurance or QPIP on these payments. Administratively, this strengthens the teacher's position when reporting the fees as business income on his/her tax return, although it does not change the proper legal characterization of the relationship between the taxpayer and the payer.

A teacher teaching a specialty course or seminar within the university confines, but on behalf of an outside institution, would do well to arrange for payment directly from the sponsor. If the remuneration is channeled through a university payroll and reported on the T4 «Relevé 1» form, the recipient will experience difficulty in persuading the District Taxation Office that it is business income. His/her prospects for success would improve if the income were paid through accounts payable on receipt of an invoice from the teacher or reported on a T4A «Relevé 2». Teaching such courses should be voluntary and divorced from the taxpayer's normal University responsibilities.

Teachers may also supply non-instructional services to their University. If there is a contract for a specific result to occur, the specific individual performing the service is not named, and payment is by invoice, T4A reporting may be reasonable. Activities such as programming or preparation of textbooks would be examples of such activity. Professional advice should be sought to clarify the potential tax treatment of this type of income.

Clearly, it is to a teacher's advantage to have all business income recognized as such because of the broader range of deductible expenses. For instance, if a teacher maintains an office in the home in order to earn business income, the expenses of the office are deductible from his/her business income (see "Home Office Expenses").

Taxpayers with income on which tax is not deducted at source and which attracts at least $3000 ($1800 for Quebec residents) of tax in the year are required to make quarterly installment payments. Interest will be charged on the deficiency if the taxpayer has previously received a request for instalments from the taxing authority.

Fiscal Year (Unincorporated Business)

In an attempt to reduce individual taxpayers' ability to defer taxes on self-employment income the CRA introduced legislation in 1995 that requires self-employed individuals to adopt a calendar year for income tax purposes. However, a self-employed individual must now report self-employed income in the calendar year. The prescribed forms to be prepared in the personal income tax return are Form T-2124 for self employed business income and Form T-2032 for self employed professional income.

Accounting for Professional Income

The taxpayer must declare all professional income in the year in which it becomes receivable regardless of whether or not it is actually received (the accrual method). An account for services rendered will be deemed to have become receivable on the date when the bill for services is presented or the date when the bill would have been presented if there were no undue delay in presenting it, whichever is earlier. In certain circumstances, an offsetting deduction may be claimed against receivables as a reserve for doubtful or bad debts or for goods or services still to be rendered in the future (paragraphs 20(1)(l),(m) and (n) «140, 150, 152»). Certain professionals and professional partnerships (accountants, dentists, lawyers, Quebec notaries, medical doctors, veterinarians or chiropractors) may elect not to include year-end unbilled work in process in their income. The value of the work in process will include the value of the owner's time.

Deductions from Business Income

Generally speaking, a taxpayer may deduct from business income those current expenses or costs which were incurred in order to earn the income. The expense must be reasonable, not in the nature of a personal or living expense and not for the purpose of obtaining an asset of enduring value, i.e., a capital outlay. Allowable expenses will be deductible in the year incurred unless normal accounting treatment requires them to be deducted in a later year (e.g., prepaid fees, insurance, etc.) or the Income Tax Act requires them to be deferred (e.g., certain reserves).

Typical examples of expenses incurred by teachers to earn business income are books, journals, travelling, office supplies and facilities, telephone, postage, typing, photocopying and wages for part-time help. Less common may be expenses for promotion and entertainment. This type of outlay must not only be reasonable but is generally restricted to 50% of actual cost. Recovery of GST on these outlays is also only 50%. One must be prepared to document such expenses with supporting receipts if requested to do so. In Quebec, a progressive ceiling applies to promotion and entertainment expenses. If sales are less than $32,500 the ceiling is 2%, between $32,500 and $52,000 the ceiling is $650, and above $52,000 the ceiling is 1.25%.

An individual in business may deduct salary paid to a spouse or child, providing the expense is reasonable in the circumstances and intended to earn income. On the retirement of the spouse it is possible to pay a retiring allowance, which may be transferred to an RRSP (paragraph 60(j.1))«339d.1».

The computation of office expenses and the cost of the use of an automobile may be rather complex and will be described in some detail.

Home Office Expenses

- If a teacher requires an office in his home to earn business income and uses the home office exclusively for earning business income, he/she may deduct the proportion of total expenses reasonably related to earning the business income. If the house has eight rooms of which the office is one of average size, then one-eighth of all costs of maintaining the residence may be deductible. Expenses for home offices will be allowable only to the extent of the taxpayer's net income for the period from the business and only where the office is the principal place of business or is used on a regular or continuous basis for meeting clients, customers, or patients. Home office expenses that cannot be claimed in one year due to income restrictions may be carried forward indefinitely and claimed against future business income. In Québec, the deduction is limited to 50% of the expenses with the exception of heating and hydro costs.

  If the taxpayer can meet these criteria, the maintenance costs of the office may include a reasonable proportion of the realty taxes, repairs, redecorating, insurance, heat, light, water, cleaning and mortgage interest. Capital cost allowances (depreciation) on the office portion of the house are also deductible but it is recommended that where there has been no material structural change to the house in setting up the office depreciation not be claimed for the following reasons:

  - Capital cost allowances are potentially subject to recapture upon the sale of the property or on conversion back to personal use if no actual decline in value has occurred.

  - A taxpayer who claims capital cost allowance renders himself/herself liable to tax on any capital gains on the office portion of his/her home when he/she sells or converts it to personal use. Full exemption from capital gains tax under the principal residence rules will be preserved if the taxpayer refrains from claiming capital cost allowance. (See IT-120R6, paragraphs 30, 31 and 32). Since 1982, only one principal residence per family (including unmarried children less than 18) is eligible for the principal residence exemption.

Where there has been a structural change in the building so that the use for business is of a more substantial and permanent nature, then the portion used for business will cease to be eligible for exemption from tax on any capital gain as a principal residence whether or not capital cost allowance is claimed. (IT-120R6 paragraph 32).

Capital Cost Allowance

- Capital cost allowance (CCA) on furniture and equipment used in the business may be deducted during the period of business use. The CCA rate for furniture is 20% and for computer hardware (including system software) is 55% (the January budget proposes a 100% rate for the period January 27, 2009 to February 2011). The CCA rates that apply to computer hardware have increased in recent years. Computer hardware purchased after March 22, 2007 has a CCA rate of 55% (and after January 27, 2009 100% until January 31, 2011) subject to the half year rule in the year of purchase except for the new 100% write off . The rates are applied to the fair market value at the time the assets are converted from personal to business use, or to the cost of the asset if acquired directly for business purposes.

  At the close of each year the CCA (depreciation) will be deducted from the capital value of the assets and the depreciation claim for the following year will be the applicable percentage rate of the residual balance which is described as the "undepreciated capital cost" (see example under "Automobile Expenses").

  Property acquired during the year is eligible for only one-half the normal rate applicable to the particular capital cost allowance class in the year of acquisition (with the exception noted above).

Convention Expenses

- The general rule is that a self-employed individual may deduct from business income the cost of up to two conventions a year held by a business or professional organization related to the taxpayer's business. The law requires the convention be held at a location consistent with the territorial scope of the organization, but if the organization is an international one, this would allow deductibility of a convention held almost anywhere. A taxpayer can be required to prove the convention helped him/her in earning income from business. He/she cannot deduct costs of a spouse or children (unless they are active in the business) and can only deduct 50% of the convention cost represented by food and entertainment. (IT-131R2).

Automobile Expenses

- Travel expenses frequently include the costs of owning and operating an automobile that is used partly for business and partly for pleasure. A claim for the expenses requires a record of the total costs and of the portion reasonably attributable to business use. If requested, the taxpayer should be prepared to satisfy the CRA that he/she is entitled to the expenses claimed, be able to produce receipts for the listed automobile expenses and to support both the total kilometres and the business kilometres travelled during the year. Therefore, it is a good idea to use credit cards as much as possible rather than cash and to keep receipts. Note that business use does not include traveling to and from work but only traveling in the course of carrying on the business, including out-of-town business trips. If a taxpayer's business office is in the home, the costs of travelling between the office and the clients' premises may be claimed.

  Operating expenses will include gasoline, oil, repairs, supplies, tires, parking, carwashes, licence fees, finance costs and insurance. There is a limit on deductible interest on car purchases. For example, interest on car purchases is limited to $300 per month.

  Subject to the half-year rule mentioned above, (see Home Office Expenses) capital cost allowance on vehicles may be claimed at the rate of 30% of the undepreciated capital cost (UCC) of the vehicle, being the original cost less accumulated depreciation (capital cost allowance). Depreciation may be claimed on a maximum value of $30,000 plus taxes for purchases after December 31, 2000.

Lease payments are restricted to $800 per month after December 31, 2000, plus taxes. There is also an additional limitation on deductible lease payments where the vehicle, if purchased, would have exceeded the maximum purchase value of $30,000.

A travel record should be kept so that the number of kilometres travelled on business can be proven in the event of an audit by the CRA.

Each auto purchased for an amount exceeding the maximum purchase value (actually $30,000) must form a separate class for calculating CCA. No terminal loss or recapture on disposal of the auto is allowed. A deduction equal to ½ the normal CCA is permitted in the year of disposal. For autos purchased for less than the maximum purchase value, the old CCA rules continue to apply.

Business or Professional Fee Income

- Taxpayers must file a statement of business income and expenses, if applicable, with their income tax returns. For this purpose Forms T2124— Statement of Business Activities and T2032 Statement of Professional Activities— are available from any District Taxation Office or on the website of the CRA. For Quebec purposes, the form number is TP-80-V The statement will cover a taxation year ending on December 31.

Investment Tax Credits

- The tax system contains rules permitting taxpayers to claim a tax credit for part of the cost of conducting scientific research. Eligible expenses include purchases of capital equipment and outlays for operating costs as long as it is for work, which is done by, or for furthering "scientific research and experimental development," as defined by the CRA.

  This system allows tax credits or, in certain circumstances, cash refunds to companies engaged in research with commercial application, including many small companies incorporated by individual scientists/software engineers. The rates vary among regions of Canada depending upon their state of economic development. Research salaries, including salaries paid to the incorporator, are eligible expenses. To simplify the determination of eligible "overhead" costs, taxpayers may use a proxy amount election when filing and claim overhead-type outlays of up to 65% of direct research salaries subject to an overall cap of actual overhead expenditures incurred. There are restrictions on the amount of salary paid to shareholders owning 10% or more of the shares of the company that will qualify for Investment Tax Credits.

  CRA now requires that any application for investment tax credits be filed within eighteen months of the end of the fiscal year of the business. The CRA has recently stated that no extensions will be permitted if an application for an investment tax credit is not complete by the eighteen month deadline.

  These rules are potentially very helpful to researchers but require careful professional guidance, particularly since many provinces have Scientific Research and Experimental Development programs of their own with different rules.

  Readers with a corporation involved in film production should consider obtaining certification by the Minister of Communication. Tax credits are available for qualified productions.

Taxation of Artists, Writers and Musicians

- CRA Bulletin IT-504R2 (*IMP 80-5R4*) deals with the determination of income for artists and writers who are self-employed. The subject matter includes sources of income, reasonable expectation of profit and inventories and gifts of art (see paragraphs 1 to 9). The section dealing with reasonable expectation of profit describes the criteria used to determine whether or not a business is being carried on. This Bulletin will be of interest to all those individuals whose creative efforts do not promise to result in large incomes. Generally, the IT Bulletin recognizes that artists may take years to recognize a profit from their activities, but at the same time tries to distinguish between genuine artists engaged in an artistic business and those merely engaged in a hobby. CRA will consider several factors including:

- how much time is devoted to the art;
- the extent of public exposure of the artist's work;
- whether the artist is represented by an agent/publisher;
- how much time is devoted to marketing;
- revenues received and the profit/loss history;
- the variation over time in the value or popularity of the taxpayer's work;
- whether the expenses are relevant to the endeavours;
- the artist's academic and professional qualifications;
- membership in relevant associations;
- the level of public and peer recognition, awards, etc.;
- the significance and increase in gross income; and
- the potential possible distribution of the art.

Artists and writers who have full time employment as a university teacher may also find it useful to have the support of their employer that the expenditures they incur are not required in order to maintain employment. Expenses of employed artists and writers are covered in paragraphs 19 to 22 of the IT Bulletin. Expenses up to $1,000 incurred in pursuing a "qualified artistic activity" can be deducted so long as they do not exceed 20% of employment income from artistic activities less any other employment expenses allowed. Any expense that exceeds the limit can be carried forward to the subsequent year. Quebec has not adopted this provision.

Musicians using their own instruments in employment should refer to section 8(l)(p) «78.4», which deals with deductions for the costs of musical instruments. Maintenance, rental, insurance and capital cost allowances are deductible to the extent that they do not exceed employment income from this source. However, it is important to ensure that the use of the instrument is directly for employment purposes or is a condition of employment, as opposed to a personal hobby, since use related to the latter is not deductible.

INCORPORATION

Significant tax advantages may be obtained by incorporating a business. The low tax rate allowed Canadian small businesses operating in particular provincial jurisdictions, combined with the dividend tax credit, may result in a lower aggregate tax burden than that applicable to an unincorporated business. For example, the corporate rate of tax on the first $400,000 ($500,000 as of January 1, 2009) of taxable income is approximately 16.5% (Ontario), compared to personal tax rates ranging up to approximately 46.4% in Ontario. The federal portion of these corporate tax rates has dropped to 11% as of January 1, 2008. While additional tax may be payable on the withdrawal of such income, by way of a dividend, there may be ways of reducing or deferring such tax so that the overall burden is less. Any investment income earned by a small business corporation is subject to higher tax rates. The corporation can recover a portion of the tax paid on investment income when it pays taxable dividends to its shareholder(s).

Other advantages besides the potential for tax deferral include the possibility of splitting income between family members and the potential eligibility for the $750,000 capital gains exemption that is available on the disposition of the shares of a small business corporation. The costs of incorporating include initial costs and ongoing extra accounting and legal fees and annual filing fees to the jurisdiction in which the company is incorporated.

Personal Service Corporations

In the past, executives and highly paid employees have attempted to reduce their personal tax burden by interposing a corporation between themselves and the organization to whom they provided services. Frequently, this corporation was used to split the executive's or employee's income among his/her family members.

To ensure that individuals who use such corporations do not achieve any undue advantage through the corporation, the only deductions allowed to the corporation are for the wages, salaries and other employment benefits paid to these incorporated individuals. No expenses other than those that could be claimed by an employee are deductible. Furthermore, such corporations now pay tax at the maximum corporate rate. Tax must also be paid on any dividends paid by the corporation to its shareholder(s).

Business Investment Losses

If one disposes of a share or loan receivable from a Canadian small business corporation either by an arm's length sale or because the corporation is effectively insolvent, the resulting loss multiplied by the fraction of the loss which is allowable for that year (50%), may be deducted from income from other sources. The company must carry on business in Canada and 90% of its assets, valued at fair market value, must be employed in the business operation. Being effectively insolvent includes bankruptcy and cases in which it is reasonable to expect the corporation will be wound up, and where, in fact, it has been dormant for 24 months. Professional advice should be sought when determining one's eligibility for this deduction as other factors such as past claims for the capital gains exemption can restrict use of this provision.

MISCELLANEOUS

Alternative Minimum Tax

There is a basic $40,000 income exemption before the alternative minimum tax applies. The alternative minimum tax usually applies where a taxpayer has large capital gains, substantial dividends and tax-sheltered income. The AMT mechanism basically permits a taxpayer who pays excess tax in one year as a result of the AMT rules, to apply that excess against taxes payable in the following seven years. Therefore, taxpayers in receipt of retirement or severance allowances should be alerted to AMT considerations particularly if they do not anticipate significant future income.

Interest Expense

One of the ways to improve personal cash flow is to eliminate debt on which nondeductible interest is being paid. Available cash should be used firstly to repay funds borrowed for personal expenditures (such as a home mortgage or loans for personal assets) rather than to repay loans for investment or business purposes.

If an individual owns investments or a business, it may be possible to convert nondeductible interest into deductible interest if care is exercised in restructuring the loans. It is worth noting that while interest is generally not deductible if there is no corresponding income-generating asset, interest related to a loan for the purchase of an income-generating asset may in some circumstances continue to be deductible even after the sale of the underlying asset itself. Interest on loans for investment purposes is only deductible to the extent that it is actually paid in the year unless the taxpayer computes his/her income on the accrual basis.

Individuals who are partners in an unincorporated business (legal, medical, etc.) may consider using accelerated drawings to pay down personal debts in respect of which the interest expense is not deductible. The partners could then borrow to inject capital into the business or the partnership could borrow to replace needed working capital. In either case, the interest on these new loans should be deductible. Furthermore, the interest on these loans will not be included in the calculation of "cumulative net investment losses" as such losses will be business rather than investment losses.

In Quebec, there are restrictions on the deductibility of investment expenses. These investment expenses include interest paid by an individual on loans contracted to acquire debentures, shares or units in a mutual fund trust. Investment management fees, safekeeping fees and fees paid to investment advisers are also included. These investment costs are deductible up to a maximum of the return on investments. The return on investments essentially includes dividends, interest, and return on foreign investment, fees, trust income and capital gains that are non-allowable for the capital gains deduction.

Directors' Liability

The case law in respect of Directors' liability continues to accumulate. Generally speaking, directors are being found to be liable for source deductions and other withheld amounts (GST for example) that are not remitted to the CRA. For instance, in one case regarding the failure of a corporation to remit employees' withholding taxes, one director was held liable as he had not formally resigned prior to the failure to remit the source deductions. In another case, a director who had resigned in writing and had the resignation accepted by two shareholders in writing was held not liable. Directors have also been held liable for a company's failure to remit GST, provincial sales taxes and many other amounts that are subject to withholding at source. Legal advice should be sought before accepting directorships. For several years, the CRA has attempted to ensure that directors of incorporated entities, including unpaid directors of non-profit organizations, assume liability for unremitted sales and payroll taxes.

Quebec Pension Plan

In 1997, Quebec made changes to the Quebec Pension Plan, which will make it easier for employees in Québec to take a phased-in retirement. The changes permit employees who are working a reduced number of hours to ask for a once-a-year payment from the Québec Pension Plan. Normally, a payment from the Québec Pension Plan would disqualify the employee from making additional contributions to the plan and therefore would reduce the employee's pension entitlement. The changes to the Québec Pension Plan are such that this annual payment, although taxable in the year of receipt, will not affect the employee's ability to continue to earn additional pension credits based on their reduced earned income. In this manner, an employee working a reduced number of hours can "supplement" his reduced wages by drawing down on his Québec Pension Plan entitlement and he can continue earning additional pension credits until he retires.

Student Loan Repayments

The federal government pays interest on a student loan while a student is at school and all payments are deferred until the completion of the student's studies. There is a six-month period following graduation when no payments are due. Payments on the loan must be made over a nine and one half year period. The federal government will pay interest costs for a period of time in cases of financial hardship.

Students may claim as a non-refundable tax credit interest paid in the year or the five preceding taxation years on a loan under the Canada Student Loans Act. This provision became effective for interest payments made after 1997. In Quebec, interest paid is not limited to the five preceding taxation years.

INTERNATIONAL TAX ISSUES

Reference should be made to the determination of residency considerations raised earlier in the Sabbatical leave section of this guide.

Dividends, Interest, Rents, Royalties and Similar Payments

With a few minor exceptions, dividends, interest, rents, royalties and other passive income, payable to non-residents from sources within Canada are subject to withholding tax. The rates range from 5% to 25% depending upon the nature of the income and the provisions of any relevant international tax treaties.

The taxpayer should give notice of his/her non-residency to companies, banks, and other institutions that pay him/her investment income and direct them to withhold the tax and remit it to the Receiver General. Banks, trust companies and stock brokerage firms are familiar with the various rates of tax and the remittance procedures involved and will perform this service for their customers.

Canadian Departure Tax

Persons who cease to be residents of Canada should be aware that they may be subject to tax on capital gains on certain investments and other capital properties which they will be deemed to have disposed of immediately prior to departing from Canada (Section 128.1 «242-247»). Exemptions and elective provisions exist and should be investigated.

Canadian tax law has for many years provided for a deemed disposition of all capital assets upon giving up Canadian residency, with the exception of certain defined assets called "taxable Canadian property." As of October 1, 1996, rules restrict even further the class of assets considered “taxable Canadian property”, limiting them now to Canadian real estate, Canadian business property and a few other financial assets such as pension rights and stock options. This will ensure that capital gains tax will become due upon departure to the extent the taxpayer is holding on to capital assets that have appreciated in value. In lieu of paying the tax at once, the taxpayer can elect to post security and defer paying tax, without interest, until the property is actually sold.

Canadian Rental Income

Non-Residents — If a non-resident owns a home and rents it during his/her absence from Canada, the rental income is subject to tax, which may be paid in accordance with the following alternative procedures:

- The taxpayer may arrange with an agent, or his/her tenant, to withhold and remit 25% (or less, if reduced by treaty) of the gross rents and permit such remittances to constitute a complete discharge of the liability for Canadian income taxes on rental income (Paragraph 212 (1) (d)). (The Quebec Taxation Act does not levy a withholding tax on payments to non-residents.)

The non-resident may elect under Section 216 to pay tax on his/her net rental income at marginal rates applicable to residents but without claiming personal tax credits for himself/herself or dependants within two years of the end of each taxation year in which the rents were received. The marginal rates for the taxation year will be applied to net rental income after deduction of all relevant expenses such as realty taxes, repairs, insurance, mortgage interest, agents' fees, capital cost allowances on furnishings, etc. If the tax on net rental income proves to be less than the amount already withheld, a refund of the excess may be claimed.

Capital cost allowances (depreciation) may be claimed on the furnishings. For example, if a teacher rented his/her residence containing furnishings that were purchased for $10,000 under a lease running from January 1, 2008 to December 31, 2008, the teacher would be entitled to claim capital allowance of $1,000 (½ of 20% of $10,000) for the taxation year ended December 31, 2008.

The above example assumes that the teacher had a net profit (income before CCA) of at least $1,000 from the rental property during the year. A rental loss cannot be created or increased by claiming CCA on either furnishings or the building.

It is possible there could be a substantial deterioration in the value of furniture over the period of a lease. This could well result in a reduction in the fair market value in excess of the capital cost allowance claimed. If the furniture is sold a "terminal loss" will result. The terminal loss can reduce taxable income in the year from any source.

Subsection 45(2) «284» allows the taxpayer to elect that no change in use has occurred in the conversion of property from a personal use property to an income generating property. By so doing, even though the taxpayer will not be able to claim the house as a principal residence in years of non-residency, he/she will be able to defer any capital gains triggered when the rental property is eventually reconverted to be a personal use property (See "Election under Subsection 45(2) «284»").

- As an alternative to the procedure described above, the non-resident may elect to file with CRA, Taxation form NR6 which is a joint undertaking by the non-resident and his/her agent to file an income tax return (under section 216 as described above) within six months after the end of the year. Under such an arrangement the agent is required to withhold and remit 25% (or 15% depending on the treaty Canada has with the country in which the Canadian non-resident resides) of the net rental income (rent less expenses but before deducting CCA). When the income tax return is filed, the balance of the income tax owing, if any, must be paid, or a refund claimed if there has been an overpayment. A separate undertaking is required for each taxation year (subsection 216 (4)) and should be filed before the start of the taxation year.

Residents — An individual who remains a resident of Canada regardless of the fact that he may emigrate temporarily to a foreign country must pay Canadian tax on his/her world income, including the net rental income of his/her home, if applicable. (See form T-776, Statement of Real Estate Rentals and form TP-128-V for Quebec)

In 1998, the federal government introduced requirements on all Canadian residents to disclose all foreign-held assets with a total tax cost of more than $100,000. (Note: the use of cost rather than fair market value means, for example, that a taxpayer who paid $90,000 for a foreign condo which has appreciated to $110,000 need not file unless the taxpayer owned other foreign assets which cost at least $10,000.) The regulations exempt certain properties, including personal-use property (e.g., a foreign condo used as a personal residence rather than as a source of rental income), active business assets, and the foreign component of RRSPs and RRIFs. Penalties for non-compliance are very severe, ranging from up to 10% of the value of the foreign assets for each year of failure to report. CRA current practice is to assess a $2,500 penalty for each year of non-compliance.

Election under Section 45(2) «284»

If a principal residence is rented out as a rental property (or used in a business) and thereby converted to an income-producing property, the taxpayer is deemed by subsection 45(1) «281» to have disposed of the property at its fair market value. Normally, this does not create an issue because the resulting gain is usually exempt from tax on the basis that the house was the taxpayer's principal residence. Subsection 45(1) «281» also deems the taxpayer to have reacquired the property — both land and building — at that fair market value, and the taxpayer may claim capital cost allowance on the deemed reacquisition cost of the building. However, the taxpayer may elect under subsection 45(2) «284» to be deemed not to have commenced to use his/her property for the purpose of producing income, and where such election is made there is no deemed disposition and reacquisition. At the time of moving back into the house there will be no deemed disposition and reacquisition and no gain or loss. If the 45(2) «284» election is not made, any increase in value during the rental period will be taxed because of the deemed disposal at fair market values at the end of the rental period. The 45(2) «284» election should be filed with the tax return for the year during which the initial change occurred. The election is made by attaching to one's return a signed and dated letter that describes the property and states that the section 45(2) election is being made. The CRA has the discretion to accept a late filing of the election.

During the years when an election is in force, the owner may be eligible to designate the residence as his/her principal residence for up to four years (except where section 54.1 «286» applies as discussed in the following paragraph) even though he/she did not "ordinarily inhabit" the property during those years. This rule applies, for example, to an individual who moves out of his/her residence with the intention of returning to it at a later date and in the meantime uses it for the purpose of earning rental income. The individual must be a resident, or deemed to be resident in Canada by subsection 250(1) during the years the property was rented in order to be able to designate the property as a principal residence for those years. During the period covered by the election under subsection 45(2) «284», all rental income (net of applicable expenses except capital cost allowance) is subject to tax.

Section 54.1 «286» removes the four-year limitation referred to in the preceding paragraph in instances under subsection 45(2) «284», where the employee has moved as a result of his/her employer wishing him/her to work at another location.

Summary of Advantages of Non-Resident Status

As discussed above, a teacher on sabbatical or temporary leave of absence in a foreign country will probably still be considered to be a resident of Canada. However, those individuals who feel that they meet the criteria outlined in IT-221R3 should consider the following advantages of achieving non-resident status:

- Income received by non-residents from sources outside Canada is not subject to Canadian income tax.

- Withholding tax is applied to investment income paid or credited to non-residents at rates likely to be lower than the marginal rates imposed upon residents. There is no withholding tax on interest paid in foreign currency (i.e., $US) or on most government debt instruments.

- Net rental income will probably be taxed at lower rates to non-residents than to residents.

- Some non-residents (for example, residents of the U.S.) may be able to de-register Canadian registered retirement savings plans at a lower income tax rate than that applied to residents. Care should be taken to de-register the RRSP in the calendar year after ceasing to be a resident of Canada.

- Upon becoming non-resident, a taxpayer acquires certain options regarding capital gains on his/her investments, which, if judiciously selected, may result in less capital gains tax than he/she would pay as a resident. Before seeking to establish non-resident status, a teacher should consider the combined effect upon his/her interests of both Canadian and foreign income taxes. Some of Canada's international tax agreements permit Canadians to do research in treaty countries free of foreign income tax on Canadian grants and sabbatical salaries. Some of the countries also exempt income derived from teaching within their borders. In some instances similar exemptions from Canadian income tax are extended by Canada to foreign nationals teaching or pursuing research here.

  Some of the consequences to Canadians who plan to go abroad are discussed in the following sections.

INTERNATIONAL TAX TREATIES AND FOREIGN TAXATION

In addition to the Canada-United Kingdom Income Tax Convention and the Canada-U.S. Income Tax Convention, Canada has signed tax treaties with a wide range of other countries. The complete list is available on the CRA website.

The purpose of these treaties is to avoid double taxation and prevent tax evasion. Invariably, a treaty will contain provisions that determine which of the contracting states will tax income from certain specific sources and in some instances, the rate of tax that will apply. International tax treaties are usually reciprocal in that they apply in reverse to the taxation of a Canadian by a foreign country and the taxation of a foreign person by Canada. The laws of that country first govern taxation by any country. Where there is conflict between the local laws and an applicable treaty, the treaty provision will, in most instances, modify the local laws.

Canadian Tax Credit for Foreign Taxes

A teacher who remains a resident of Canada for income tax purposes even though physically outside Canada will be taxed by Canada on world income. The Canadian Income Tax Act gives the individual the right to deduct an amount from his/her Canadian taxes in respect of any foreign income taxes regardless of whether or not a tax treaty exists between the two countries. Generally speaking, the foreign tax credit allowed by Canada will be the lesser of the foreign tax paid, or the Canadian tax attributable to the foreign income. As a result, a teacher who retains Canadian residency will be taxed on the foreign-source income at the higher of the Canadian and foreign tax rates.

Canadian Taxation of Sabbatical Salary

Readers should be aware of the CRA's position with respect to taxation of Canadian residents who are abroad. (IT-221R3) (See SABBATICAL LEAVES) Even if a teacher successfully establishes that he/she is a non-resident of Canada while on a foreign sabbatical, Canada will still tax the sabbatical salary when it is paid from a Canadian university to the teacher. (Paragraph 115(2)(c) «1093d»).

Taxation in the United States

This section deals with specific and unique articles in the U.S. convention. The articles noted in this paper are select treaty articles that may be more commonly used by professors. Professional advice should be sought for any specific Canada-U.S. tax treaty issues.

A teacher who plans to take a sabbatical leave in the United States will probably qualify as a student or as an educational or cultural exchange visitor and as a non-resident alien of the United States. In these categories the individual may exclude from income subject to U.S. tax the sabbatical salary paid to him/her by the Canadian university. Otherwise, remuneration for services performed in the U.S. will normally be subject to U.S. tax even though the employer is outside the U.S.

Overriding rules — the above rules contained in U.S. Legislation are subject to overriding rules in the Canadian-U.S. Tax Convention.

Provisions in that Convention of interest to teachers are:

Article IV: Residence — in the case of dual residency, the provisions of the treaty must be referred to.

Article XIV: Independent personal services — will be taxed in the country of residency only, unless attributed to a fixed base regularly available in the other country.

Article XV: Dependent personal services — will be taxed only in the country of residence unless attributable to services performed in the other country. In any case, a Canadian resident (and vice versa for a U.S. resident) will not be taxed on remuneration for services performed in the U.S. if either:

- the remuneration is not more than $10,000 (U.S.) or
- he/she is not in the U.S. for more than 183 days in the year and the remuneration is not borne by an employer resident in the U.S. or by a foreign employer's business in the U.S.

Article XIX: Government service — a Canadian citizen will not be taxed in the U.S. on remuneration for services of a governmental nature if paid by Canada or by a province or local authority of Canada. This does not apply if the government is actually carrying on a business in the U.S.

Article XX: Students — payments made to a student from outside the U.S. for the purpose of his/her maintenance, education or training shall not be taxed in the U.S.

OBJECTIONS - PENALTIES

Notices of Objection and Appeals

When a taxpayer receives an income tax reassessment with which he/she disagrees, he/she may file a Notice of Objection by the later of 90 days from the mailing date of the reassessment or one year after the due date of the tax return. An individual taxpayer can serve a Notice of Objection on the original Notice of Assessment any time up to one year after the filing deadline for the year in question. The Notice of Objection must be directed to the Chief of Appeals at the district office or a tax centre.

The Appeals Division of the CRA will review the assessment and will contact the taxpayer to determine the nature of the objection and the basis for overturning the assessment, and will provide the taxpayer with the opportunity to make additional representations. After due consideration of the information submitted, Appeals will vacate, vary or confirm the assessment and notify the taxpayer of its action. If the taxpayer is not satisfied with this action he/she may, within 90 days from the mailing date of the notice, appeal to the Tax Court of Canada or, at a higher level, directly to the Federal Court. In either case the court will review the assessment and grant a hearing to the taxpayer or a representative and then will either dismiss the appeal or allow it and vary or vacate the assessment. At the Tax Court level, any representative other than the taxpayer must be a lawyer if the amount in dispute is more than $12,000; for amounts less than $12,000 the representative need not be a lawyer. The taxpayer must be represented by him/herself or by a lawyer in the Federal Court.

It should be noted that, generally speaking, amendments to taxpayers' returns that are initiated by CRA are not permitted after three years have elapsed since the mailing date contained on the original Notice of Assessment for that particular year. This three-year limit does not, of course, apply to returns that are fraudulent. With the introduction of the Fairness Package in 1991, taxpayers may also amend their tax returns to request refunds or claim previously unclaimed deductions to which they may have been entitled. As of 2005, a taxpayer is only able to go back 10 years in seeking fairness relief.

Penalties

CRA imposes penalties for late filing, tax evasion and similar offences. Failure to file a return for the second time in a three-year period will result in a doubling of the late filing penalty from 5% to 10% of unpaid tax plus 2% (instead of 1%) per month to a maximum of 20 months (instead of 12 months). The maximum late filing penalty therefore increases from 17% to 50% for repeat offenders.

FURTHER FOLLOW UP

Although CAUT cannot pay for individual tax counselling, or for tax enquiries of a routine nature (i.e., those that are dealt with in this guide or other CAUT-sponsored publications) or for questions unrelated to a university context, such questions can be referred to Roy Williams at Rheaume Williams Kalbfleisch.

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Individuals should identify themselves as members of CAUT. Rates that CAUT has obtained for members are as follows, exclusive of GST:

Partners	$195 per hour
Managers	$110 per hour

CAUT will entertain requests from local associations for interpretation of new income tax questions or clarifications of current CRA practice that affect the CAUT membership. Such requests should be directed to Neil Tudiver in the CAUT office.

LINKS TO OTHER WEB SITES

Federal Government	www.cra-arc.gc.ca/tax
Department of Finance	www.fin.gc.ca

Canadian Tax Foundation	www.ctf.ca

Provincial Government Sites

Alberta	www.alberta.ca
British Columbia	www.gov.bc.ca
Manitoba	www.gov.mb.ca
New Brunswick	www.gnb.ca
Newfoundland and Labrador	www.gov.nf.ca
Nova Scotia	www.gov.ns.ca
North West Territories	www.gov.nt.ca
Ontario	www.gov.on.ca
Ontario – Minister of Finance	www.fin.gov.on.ca
Prince Edward Island	www.gov.pe.ca
Quebec	www.gouv.qc.ca
Saskatchewan	www.finance.gov.sk.ca