

## Sitebuilder Quarterly Newsletter – Personal – November 2013

### Recent CRA Thinking on Topics of Interest

The Canada Revenue Agency (CRA) regularly releases its responses to queries from the general public on varying tax matters. The responses given by the CRA to these queries give us an insight to the CRA's approach to the law, including actual practices and policies of the government on such issues. Some recent queries and responses of interest are summarized below.

#### Land Used Principally in Farming

The CRA was asked to evaluate if a certain property would meet the criteria to be classified as principally used in farming for the purposes of the *Income Tax Act* (the "Act"). The farmer owned a parcel of land but was only able to use 40% of it for farming purposes. The remaining 60% was not arable or useable for any purpose. The CRA stated that in this situation it could not be argued that since 60% of the property was not useable for farming purposes that the whole parcel would qualify under the definition of "used principally" for farming purposes. To qualify, more than 50% of the land would need to be useable for farming purposes. In this case, since this property only had 40% arable land, it did not meet the criteria to be considered as "used principally" in the business of farming.

The question was then asked that if this property was adjacent to a second parcel of equal size and that entire parcel was useable farmland, would it then qualify since the spoiled portion of the two parcels combined was less than 50% of the total property. The CRA stated that it would not change the nature of the first parcel, and each parcel had to be determined on its own merits. The second parcel would thus qualify, but it would not change the nature of the first parcel nor would it meet the requirements to be considered "used principally" for farming for the purpose of the Act.

#### Disposition of Intellectual Property

The CRA was asked how a payment received on the sale of intellectual property should be treated for tax purposes. The taxpayer carried on a business that developed video games. The CRA replied that the treatment depended on a variety of factors, such as the nature of the taxpayer's business, the nature of the payment received, and the nature of the property that was sold by the taxpayer. The payment could be business income if it is received in the course of the taxpayer's software development business, or it could be included in income as a royalty payment. Alternatively, if the property was sold as capital property, depreciable property, or eligible capital property, the payment could give rise to a taxable capital gain, recapture of capital cost allowance, or an eligible capital gain depending upon the circumstances.

## **Home Buyers' Plan – Motor Home**

The CRA was asked if a motor home would be a “qualifying home” for purposes of the Home Buyers' Plan (HBP). The CRA responded that in order for an individual to participate in the HBP, one of the conditions that must be met is that the funds withdrawn from the individual's RRSP must be used to acquire a qualifying home that the individual has either begun or intends to use as the individual's principal place of residence. The term “qualifying home” is defined primarily to include a housing unit located in Canada. The CRA referred to the list of types of housing units in the Guide, *Home Buyers' Plan*, which includes a mobile home as a housing unit. The CRA drew a distinction between a mobile home, which is permanently parked and used as a residence, and a motor home, which is powered by an engine and is used for long trips rather than as a residence. It stated that it does not consider a motor home to be a housing unit for purposes of the HBP. The CRA concluded that it was unlikely that a motor home could be considered an individual's principal place of residence.

## **Moving Expenses – Spouse's Eligible Expenses**

In the situation described, an individual and his girlfriend lived in a home that the girlfriend owned. That home was sold and the couple moved to a new home in a different province. In the year of the move, the individual found employment in the new location but his girlfriend did not. The couple was married before the end of that year. The CRA was asked if the individual could claim the expenses incurred on the sale of his girlfriend's home as moving expenses.

The CRA responded that in this situation the individual should be allowed to claim the deduction. Although strictly speaking, a taxpayer can deduct only the moving expenses that he or she has actually paid, administratively, the CRA allows some flexibility for one or the other spouse or common-law partner to claim the deduction or to allow a couple to decide how the deduction will be shared. The CRA would also apply this flexibility where two individuals were not spouses or common-law partners at the time of the move as long as they were spouses or common-law partners at any time in the calendar year that the move occurred.

## **Foreign Pension Receipt**

The CRA was asked how a lump-sum payment received from a UK pension plan would be treated for Canadian tax purposes. It involved a situation where a taxpayer was a Canadian resident who had received a lump sum amount in satisfaction of his Tax Free Cash Entitlement under the U.K.'s lifetime allowance rules. The CRA stated that for purposes of the Act it appeared that the amount was from a superannuation or pension plan. As such, amounts from the plan including the lump sum payment would be included in the taxpayer's

income in the year of receipt. The CRA noted that the Canada-UK Tax Convention did not exempt pension receipts from being taxed in Canada.

### **Medical Expenses – Cosmetic Surgery – Removal of Excess Skin**

The issue posed to the CRA concerned a taxpayer who underwent bariatric surgery and, following this, another surgery for the removal of excess skin resulting from such a rapid and important loss of weight. The CRA was asked if the costs incurred by the taxpayer for the cosmetic surgery (i.e., the removal of excess skin) were qualifying medical expenses for the purpose of claiming the medical expense tax credit under the Act. The CRA confirmed that, if the removal of excess skin was required for medical reasons (e.g., to avoid a risk of infection), those costs would qualify for the credit. Expenses incurred for medical services provided purely for cosmetic reasons are normally excluded from qualifying medical expenses unless they are required for medical or reconstructive purposes.

The following expenses incurred for purely cosmetic purposes do not qualify for the credit:

- augmentations (such as chin, cheek, lips);
- body modifications (such as tongue splits);
- body shaping, contouring, or lifts (such as body, breasts, buttocks, face, and stomach);
- botulinum injections;
- chemical peels;
- implants (such as jewellery implanted into an eye or a tooth, or microdermal, transdermal, and subdermal cosmetic implants);
- filler injections (for removal of wrinkles);
- hair removal procedures;
- hair replacement procedures;
- laser treatments (skin resurfacing and removal of age spots);
- liposuction;
- reshaping procedures (such as rhinoplasty and otoplasty);
- rib removal;

- tattoo removal;
- teeth whitening; and
- tooth contouring and reshaping.

However, the following expenses continue to qualify for the credit:

- breast implant and related procedures for reconstructive purposes after a mastectomy;
- breast reduction to reduce back and shoulder pain;
- dental braces, if required, to correct a misaligned bite;
- dental veneers to correct decayed or misaligned teeth;
- gastric bypass surgery or gastric stapling;
- laser eye surgery; and
- removal of excess skin after rapid weight loss due to a risk of infection.

### **Deductibility of Fees Paid to Spouse to Manage Rental Property**

The CRA was asked if the fees paid by an individual to their spouse to manage a rental property were deductible. The fees were included in the calculation of the spouse's income for the year during which they were received. The CRA confirmed that the fees were deductible if they were incurred for the purpose of earning business or property income and if they were reasonable in the circumstances. The CRA could not provide any definitive answer because it could not determine if management duties were performed by the spouse in respect of the property, if payments were actually made to the spouse, or if the amount claimed as a deduction was reasonable. The CRA noted that the reasonableness of the fees would depend on the nature and scope of the services rendered, on similar fees paid in the industry, and on the amount of gross revenue earned from the rental property.

### **Rental Property Expenses Deductible While Vacant**

The CRA was asked if reasonable operating expenses of a rental property such as utility expenses could be deducted during a period when the rental property was vacant and not producing income while the owner was actively looking for a new tenant.

The CRA stated that the answer would depend on the circumstances in the case, but that generally all legitimate, reasonable operating expenses would remain deductible under the

circumstances described even though the property was vacant pending the successful search for a new tenant. If the expenses would normally have qualified to be deducted they would continue to be deductible even though the property was vacant for a period of time and not producing income.