PERSONAL Newsletter

November 2016 Issue 38

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Millions of Canadians have disabilities of various natures and severities. The late Minister of Finance, Jim Flaherty, was an advocate for individuals with disabilities as he introduced several tax breaks. Although these many targeted tax breaks provide relief, they are sometimes accompanied by complexities and compliance burdens. This article will review many of the common tax credits and deductions available to Canadians living with a disability.

It is important to understand that the Canadian income tax rules contain more than one definition of what is considered disabled. Certain tax rules will require "mental or physical impairment" and other rules require "infirmity." First we will review the requirements pertaining to the disability tax credit, because qualifying for this credit allows for many other tax advantages. Where an individual suffers from physical or mental limitations, but is not eligible for this credit, certain (but fewer) tax benefits remain available to the individual and his or her family.

Mental or Physical Impairment

Mental or physical impairment describes more severe disabilities. Generally, the income tax rules consider an individual to be disabled by reason of mental or physical impairment where he or she is markedly restricted from performing a basic activity of daily living for a prolonged period.

A basic activity of daily living includes:

- mental functions necessary for everyday life;
- feeding or dressing oneself;
- speaking audibly;
- hearing;
- eliminating; or
- walking.

An individual is considered to be markedly restricted where performing one of these basic activities is impossible for him or her, or requires an inordinate amount of time. Blind individuals are automatically considered markedly restricted. The disability is prolonged if it is expected to last for a continuous period of 12 months (or more). An inordinate amount of time is considered three times the normal time required to complete the activity.

The individual may also be considered markedly restricted where he or she would be markedly restricted if not for life-sustaining therapy that must be administered at least 3 times per week for a total duration of at least 14 hours per week. Where an individual is significantly restricted in performing more than one of the above activities for daily living, the cumulative effect of which results in the individual being markedly restricted,

he or she may also be considered disabled by reason of mental or physical impairment.

Certification by Medical Practitioner

In order for the individual to be eligible for the disability tax credit ("DTC") and other tax advantages which the individual can receive only if he or she is eligible for the DTC, a medical practitioner must certify that the individual meets the above-discussed conditions in CRA Form T2201. The professional qualifications of a practitioner required to make the certification will vary with the nature of the disability. For example, in the case of a speech impairment, a speech-language pathologist may complete the form. However, a medical doctor is not subject to this restriction and may make the certification regardless of the nature of the individual's disability.

Problems may arise where the practitioner making the certification does not fully comprehend the criteria on Form T2201 or he or she does not define a disability that qualifies. Based on the information provided by the practitioner, the CRA may deny the application. You can request a review of the decision by writing to the Disability Tax Credit Unit and including additional medical information that supports your case (such as medical reports).

Tax Consequences of Being Disabled

Disability Tax Credit

This non-refundable tax credit can be claimed by a disabled individual who receives confirmation from the CRA after receiving Form T2201. The credit for 2016 is $8,001 which results in $1,200 of potential tax savings (at 15%). If the individual is under 18 at the end of the tax year, an additional credit of up to $4,667 is available, but this is subject to reductions where certain deductions or credits were claimed with respect to the individual's care.

If the individual has insufficient income to fully utilize the entire DTC, he or she can transfer the credit to his or her spouse or common-law partner, or possibly to a supporting person if certain conditions are met.

Medical Expense Tax Credit

The medical expense tax credit ("METC") is its own substantive topic for discussion. Specific expenses are eligible for the METC only with respect to care for individuals who are eligible for the DTC. Further, if these outlays are claimed for the METC, they will affect the individual's eligibility to claim the DTC. Full-time care by an attendant or in a nursing home with respect to a disabled person is eligible for the METC. However, no more than $10,000 of these attendant costs may be claimed for the METC in a given year, or else the DTC will be denied. That said, if total annual attendant care costs exceed the sum of $10,000 and the DTC amount, it is better to claim the full attendant care costs for the METC and forfeit the DTC as the tax savings should be maximized.

Costs incurred for therapy or the design of a therapy program are claimable for the METC, but they will not be claimable if the DTC is denied due to claiming full-time care expenses in excess of $10,000 for the METC.

Costs incurred for group home care or supervision can be claimed for the purposes of the METC and do not affect eligibility for the DTC.

Home Accessibility Tax Credit

For 2016 and later years, the home accessibility tax credit provides a non-refundable credit for up to $10,000 (annually) of costs incurred to improve the accessibility to a home of a "qualifying individual." A qualifying individual includes individuals who have attained the age of 65 and individuals who are eligible for the DTC. An eligible renovation expense must allow the qualifying individual to gain access to, or to be mobile or functional within the home, or reduce the risk of harm to the individual within the home or in gaining access to it.

These types of expenses are generally eligible for the METC too. Notably, you can receive both the METC and the home accessibility tax credits with respect to expenses that are eligible for both. That means that up to $10,000 in annual expenses incurred to improve the accessibility of the home are potentially eligible for 30% in federal non-refundable tax credits.

Miscellaneous Tax Provisions

An employee is not taxed on the benefit enjoyed by employer-provided transportation or transportation allowance where the employee is blind or entitled to the DTC due to an impairment of mobility. Similarly, a disabled individual is not taxed on the benefit of an employer-provided attendant to assist the individual in the performance of his or her employment duties.

The annual dollar limit for the child care expense deduction is higher than is otherwise permitted when the DTC can be claimed with respect to the child.

Infirm Individuals

Many individuals may suffer from a disability, but may not be severely disabled enough to be eligible for the DTC by reason of mental or physical impairment as described above. Not being eligible for the DTC effectively denies the individual all of the potential tax advantages discussed above. However, there are further tax advantages available to infirm individuals.

"Infirmity" is not defined by the tax rules, but generally refers to an individual who suffers from mental or physical limitations, but does not meet the criteria prescribed for the purposes of the DTC described above. Put simply, infirm individuals have less severe limitations than those considered disabled under the aforementioned criteria. The tax provisions discussed below are either exclusive to or enhanced for individuals who are infirm.

Individuals may claim a non-refundable tax credit ($4,667 for 2016) for providing in-home care for an adult relative. Dependency due to mental or physical infirmity increases the value of this credit by $2,121 (in 2016).

Several medical expenses with respect to infirm individuals are eligible for the METC, some of which require certification from a medical practitioner. These include:

- full-time attendant care in residence;
- full-time nursing home care in residence; and
- care or training for a handicapped person.

Other medical expenses are available specifically to infirm individuals that do not require practitioner certification. The CRA website contains a large list of common medical costs accompanied by whether the costs are eligible for the METC and any conditions that must be met.

The disability supports deduction is provided to individuals who incur costs to assist them in earning employment income, carrying on a business, attending school, or carrying on grant-funded research. There are seventeen different infirmities and the types of assistance that qualify for the deduction.

Certain costs which might otherwise be deductible are fully deductible in computing business or property income where they are designed to assist the infirm—Braille elevator pads, for example. Similarly, a landlord can deduct certain costs designed to improve access for those with a mobility impairment.

Closing Remarks

There are many various tax provisions relating to individuals with disabilities that we did not discuss here. Many of these cross into the realm of estate planning, such as:

- registered disability savings plans;
- rollovers of registered plans;
- lifetime benefit trusts;
- qualified disability trusts;
- the preferred beneficiary election; or
- Henson trusts.

But now you have a broad understanding of the common tax credits and deductions available to disabled individuals and their families.