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! CRITICAL ACTION ITEM – US FILING OF BOI REPORT

Do you own a US entity of any kind (Partnership, LLC, Corporation, Trust etc...)?
New for 2024, every US entity MUST file a BOI report before the end of December. It is a criminal offense if you do not file this report, and you may also be subject to Civil Penalties of $591 per day.

From all indications so far, we are led to believe that you **will be denied entry to the United States if you fail to file this report!**

If you have not yet filed this report and require Real File CPA to complete this filing, **please reach out immediately to ensure timely action**. For more information you may refer to the Fin Central info page: https://www.fincen.gov/boi

! Critical Action Item Canada – Annual Corporate Report

For Corporate business owners:
Please note that your corporations must file an annual report for every Province or Jurisdiction in which you carry on business. This annual report is separate from the tax return filing, and failure to file this report in a timely manner could result in your corporation being struck from the register.

This is **not** a filing that we complete in the normal course of completing your corporate year end. If, however, you have not completed your corporate report and would like Real File CPA to file current or prior year reports for you, **please notify us immediately**.

NEWSLETTER

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This publication is a high-level summary of the most recent tax developments applicable to business owners, investors and high net worth individuals. Enjoy!

CORPORATE TAX RETURN FILED LATE: ABILITY TO GET A TAX REFUND

A July 22, 2024 Federal Court case found that CRA's refusal to accept and provide tax refunds for corporate tax returns filed more than three years after the relevant year-end was reasonable. While a specific provision allows CRA to accept requests (at their discretion) for refunds after the three-year deadline for individuals, there is no parallel provision for corporations.

While no tax refund can be provided where corporate tax returns are not filed within three years of the fiscal year-end, CRA has discretion to re-appropriate the refund to another account of the taxpayer (e.g. the taxpayer's GST/HST, payroll or income tax account). However, th is re-appropriation is fully at CRA's discretion, based on factors such as CRA error or delay, natural or man-made disasters, death, accident, serious illness, or emotional or mental distress.

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Shareholder Purchasing Asset: Input Tax Credit (ITC)

An August 20, 2024 **Tax Court of Canada** case reviewed whether a **corporation** could **claim ITCs** of $8,874 related to the **purchase** of **two vehicles** that were **used by the corporation**. One vehicle was **purchased** by **the shareholder** and the other was purchased by the shareholder and his spouse.

Taxpayer loses

To be eligible for an **ITC**, the **corporation** must meet **all** of the following conditions:

- the **corporation** must have **acquired** the **vehicles**;
- the **GST/HST** in respect of the vehicles must be **payable** or must have **been paid by** the **corporation**; and
- the **vehicles** must have been **acquired** in the course of the **corporation's commercial activities**.

The Court also found that the **corporation** was **not liable** to pay **consideration** under the purchase agreement for either vehicle; therefore, **GST/HST** was not payable by the **corporation**. As such, criterion (b) was **not met**.

While the corporation argued that the vehicles were used or available for use by the corporation, the vehicles were **not** actually **acquired** in the course of the **corporation's commercial activities**. As such, criterion (c) was **not met**.

While only **failing one** of the above criteria would be **fatal** to the claim, the corporation failed all three. The **ITC** was appropriately **denied**.

Psychotherapy and Counselling Therapy: GST/HST?

As of June 20, 2024, **certain psychotherapy and counselling therapy** services have become **exempt** from **GST/HST**. This means that those providing these exempt services are **no longer required to collect GST/HST** on their services, and these service providers are **no longer** able to **claim input tax credits** (ITCs) on inputs acquired to provide these services.

Psychotherapy and counselling therapy services are now exempt if the provider:

- is **licensed** with a **provincial body** responsible for the regulation of **psychotherapy** services (regulated only in **Ontario**) or **counselling therapy services** (regulated only in **New Brunswick**, **Nova Scotia** and **Prince Edward Island**); or
- operates in a province with **no regulatory body** but has the **equivalent qualifications** required to meet the licensing requirements in a regulated province.

In addition, to be exempt from GST/HST, those providing the services must do so within the **profession's scope of practice** in the respective regulated province.

If **all** of a registrant's **services** are GST/HST **exempt**, they may **close** their **GST/HST account** with CRA. If only some of their services are exempt, they must keep their account open and continue to charge GST/HST on non-exempt services and goods.

In addition, on June 20, 2024, there may be a deemed sale and repurchase of certain capital property (e.g. computers, furniture) used in the provision of these services due to the change from a taxable to exempt supply. This generally means that the taxpayer will have to repay all or part of the GST/HST they claimed (or were entitled to claim) as an ITC when they bought the property and when they made any improvements to it. The required repayment of GST/HST is adjusted if the assets have declined in value since the acquisition.

Shareholder Loan Account: Proper Bookkeeping

A July 31, 2024 **Tax Court of Canada** case reviewed whether payments made by a corporation in 2013 and 2014 of $24,249 and $41,680, respectively, were taxable as **shareholder benefits** on the basis that they were for the personal expenses of the shareholder. The Court also reviewed whether payments of $13,693 and $28,131 in 2013 and 2014 were taxable to the shareholder as **indirect payments** on the basis that they were made on behalf of the shareholder's son for personal mortgage payments and day-to-day expenses. The taxpayer **argued** that all these payments constituted **non-taxable shareholder loan repayments**.

Starting in 2001 and continuing over several years, the taxpayer **loaned** a **newly incorporated entity**, of which the taxpayer and his spouse were shareholders, over **$600,000**. The loans enabled the corporation to **acquire** and **operate** a **tire/auto detailing business** managed **by** the taxpayer's **son**. As the corporation could not afford a professional to prepare the corporation's tax returns, the **taxpayer compiled** the **returns**, although he had **no accounting training** other than a personal tax preparation course he took 40 years prior. In 2018, the corporation ceased operations due to financial problems.

Taxpayer loses – shareholder benefit

The Court acknowledged that the **taxpayer** had **made** a **bona fide loan** to the corporation. However, the Court observed that **payments** the taxpayer **received** from the corporation were **not** properly **recorded** via a **debit entry to the shareholder loan account** as a repayment of the shareholder loan. The taxpayer argued that he **did not know how to record payments** for personal expenses in the shareholder loan account. The Court found that this was **not a sufficient reason** for not debiting the shareholder loan account for the repayments of the shareholder loan. The Court noted that the **choice** was to **pay for professional assistance** for the books and records or **learn how to do it properly**, neither of which the taxpayer selected. The **shareholder benefit** income inclusion was **upheld**.

Taxpayer loses – indirect payment

The Court noted that **all** of the following **conditions were met** in respect of payments to or for the benefit of the taxpayer's son:

- the payments were **made** to a person (the son) **other than** the **reassessed taxpayer** (the shareholder);
- the **allocations** were at the direction or with the **concurrence** of the **reassessed taxpayer** (the shareholder);
- **the payments** were made for the **benefit** of the reassessed taxpayer (the shareholder) or for the benefit of **another person** (the son) **whom** the reassessed taxpayer **wished to benefit**; and
- the **payments would have been** included in the **reassessed taxpayer's income** (the shareholder's income) if they had been received by them.

The taxpayer was, therefore, required to pay tax on the indirect payments benefiting his son.

WITHHOLDING ON RENT PAID TO NON-RESIDENTS: DRAFT LEGISLATION

Under current rules, when rent on Canadian property is paid to a non-resident, 25% of the gross rent must be withheld and remitted to CRA. This could be the case where, for example, a college student pays rent to live in the basement of a house owned by a non-resident. If the non-resident provides an NR6 form, the 25% withholdings are based on the net rent.

Effective August 12, 2024, the Department of Finance released a proposal that would provide an **exclusion** to this **withholding requirement.**

Specifically, an individual would **not** have to **withhold tax** in respect of an amount **paid** or credited to a **non-resident** as rent for the **use of a residential property** in which an **individual resides** (whether or not that individual is the one paying the rent). In this case, the **non-resident person** would be **required to remit** and report the withholding, assuming that an agent of the non-resident was not already required to do so.

Note: All rents paid on Canadian real estate to a non-resident that do not fit within the specific terms of this exception would continue to require withholdings and reporting by the tenant.

EMPLOYMENT EXPENSES: SALARY TO SPOUSE

A June 17, 2024 **Tax Court of Canada** case reviewed a **commission salesperson**'s deduction for **remuneration paid** to their **spouse** (L) for general **administrative services** as a **self-employed** contractor.

Taxpayer loses

The **annual deductions** of $20,000 for services, including **arranging appointments** with **prospective clients** (who completed preprinted forms at a kiosk to express interest in a salesperson's products/services), were **not supported** by a **contract** or by any **documentation** such as a log or **list of customers** contacted. The taxpayer testified that **payment** was made in the form of **joint household expenses** that did **not directly match** the amounts deducted. The taxpayer testified that he left the **determination** of the **amount deducted** to his **accountant**.

The **Court agreed** that the onus was on the **taxpayer** to maintain **books and records**, such as a **contract for services** or **actual payments** for those services, to document expenses claimed. His **verbal testimony** alone was **not adequate** to support the deductions claimed – they were **properly denied**.

Employment expenses – regular vs. commission employee

The scope of deductible employment expenses for employees earning commission income is much broader than for non-commission employees. Expenses incurred to earn commission income are deductible provided that they are not specifically prohibited (purchase of capital assets, personal expenses or payments that reduced a taxable employment benefit) and provided that the other standard conditions for deduction are met. In contrast, only expenses specifically listed as deductible can be deducted against non-commission employment income. For example, a non-commission employee can deduct salaries paid to an assistant only if the employment contract specifically requires them to pay for an assistant; however, no provision would permit a deduction for fees paid to a self-employed assistant.

New Canada Disability Benefit: Proposed Regulations

Details on the new Canada disability benefit were included in regulations that were released on June 29, 2024. This benefit is intended to provide support to low-income working-age individuals with a disability.

The **maximum benefit** for the July 2025 to June 2026 period would be **$2,400** ($200 per month), but would be **reduced by** the following:

- **20%** of income above **$23,000** if the beneficiary is **single**;
- **20%** of income above **$32,500** if the beneficiary is **married** or has a **common-law partner**; and
- **10%** of income above **$32,500** if the beneficiary is **married** or has a **common-law partner** and **both are eligible**.

In addition, the **first $10,000** of **work income** ($14,000 for a couple) would be **exempt** from this calculation. Work income would have the **same definition** as that used for the **Canada workers** benefit, which includes income from sources such as employment and self-employment. The maximum benefit amounts would be increased in future years for **inflation** (based on the consumer price index).

To be eligible for the benefit, the taxpayer would be required to:

- be a **resident of Canada** (for tax purposes);
- have a valid **disability tax credit certificate**;
- be between the **ages of 18 and 64**;
- have **filed an income tax return** for the previous tax year; and
- be a **Canadian citizen**, permanent resident, protected person, temporary resident (that lived in Canada for the past 18 months) or registered (or entitled to be registered) under the Indian Act.

If an **application is denied**, the taxpayer would have **180 days** to apply for **reconsideration**. If still unsuccessful, the decision could be **appealed** to the **Social Security Tribunal**.

Trust Distributions: Violating Trust Terms

A March 30, 2023 **Tax Court of Canada** case reiterated the importance of the trustee of a trust properly understanding the terms of the trust. In this case, the **trust** had **paid** $100,000 to **two beneficiaries**, both under age 18, from capital gains eligible for the capital gains exemption. However, the **terms** of the **trust prohibited payments** to beneficiaries **under age 18**.

Taxpayer loses

The Court ruled that **amounts paid** in **violation** of the **trust terms** were not **payable** for income tax purposes and were therefore **neither income** to the **beneficiaries** nor **deductible** from the **trust's income**.

If you have any questions, give us a call at 1-877-626-7363 or email dave@realfile.ca

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THANK YOU TO EVERYONE WHO JOINED US FOR THE SEMINAR EVENING!

Full Seminar Recap Available Here:

OR

[Link]