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## TAX TIPS & TRICKS - Third Quarter 2021

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

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- *Access to the Canada Emergency Wage Subsidy (CEWS), Canada Emergency Rent Subsidy (CERS) and Canada Recovery Benefits has been extended to **October 23, 2021**.*

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### CANADA EMERGENCY RENT SUBSIDY (CERS): More Clarification

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CERS provides support to businesses by covering a portion of rent and property ownership costs of qualifying property. The government has recently extended access to this program until **October 23, 2021**.

The CERS program has the following two components:

- the base CERS which subsidizes eligible expenses based on the applicant's revenue decline compared to pre-pandemic earnings; and,
- the lockdown support component, which provides an additional subsidy for eligible applicants subject to a lockdown under a public health order (due to COVID-19) that must shut their doors or significantly restrict their activities (25% of the revenue derived from the property from the prior period must have been earned from "restricted activities").

CRA has recently provided several comments on these subsidies.

### ELIGIBLE PROPERTY

#### *Property with a personal living space*

A self-contained domestic establishment ("SCDE," typically a living unit with restricted access that contains a kitchen, bathroom and sleeping facilities) used by the applicant (or by a person not dealing at arm's length with the applicant) is not a qualifying property and therefore not eligible for CERS.

However, in a May 17, 2021 Technical Interpretation, CRA opined that property could still be eligible for CERS even if a portion of it were an SCDE. CRA provided the example where an individual owned a single-story building, with a store in the front of the building and a separated apartment in the back. The separated apartment had its own entrance, bathroom, kitchen, bedroom, and living room. The portion of the building used for the store could be a qualifying property, and therefore eligible for CERS.

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### CRA COLLECTIONS: Potential Impact on Business

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As some businesses struggle with cash flow, they may be motivated to prioritize suppliers and other creditors ahead of CRA. A recent court case demonstrates CRA's power to collect tax arrears and the impact of CRA exercising this power on a business.

In a June 11, 2021 Court of Queen's Bench of Alberta case, the taxpayer had fallen into arrears in respect of both GST/HST and payroll remittances. Payment arrangements were entered into with CRA to assist in meeting the obligations. However, after failing to meet the agreed-upon terms, requirements to pay (RTPs) were issued to several of the taxpayer's clients.

RTPs are legal documents that require recipients (the taxpayer's clients in this case) to submit payment to CRA rather than the taxpayer. The RTP gives priority to CRA over most other creditors.

After the taxpayer had renegotiated a new payment plan, all RTPs were cancelled except for the one to its largest client. After struggling to meet the new payment plan and facing a new withholding liability, CRA once again issued RTPs. Shortly after, the taxpayer lost its largest client (the one that the sole RTP had been issued to previously).

The taxpayer advised CRA that it was considering receivership, which led to the seizure of assets and issuance of more RTPs. One client sent a letter to the taxpayer that noted that CRA had visited them personally to serve the RTP and implied that the taxpayer could be out of business or shut down. Further, the client noted that they were asked by CRA whether they could get their parts from alternate suppliers, and the client indicated that they were now considering doing so.

### ***Taxpayer loses***

The court found that CRA and its agents did not owe a duty of care to the taxpayer, that there was no negligence, and that the government's actions did not unlawfully interfere with the economic relations of the taxpayer.

***ACTION ITEM:*** *CRA can collect your tax liability by requiring your clients to pay them rather than you. To limit the business and operational issues arising from an RTP, steps should be taken proactively to communicate with CRA collections.*

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### **TRAVEL ALLOWANCES: Limited Distance Covered**

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In a March 5, 2021 French Technical Interpretation, CRA commented on whether a travel allowance paid to employees on a per kilometre basis, but only up to a limited number of kilometres, could be a non-taxable allowance.

For the allowance to be non-taxable, it must be a reasonable allowance for the use of a motor vehicle when travelling in the performance of employment duties. Further, measurement of the use of the vehicle must be based solely on kilometres, or the allowance will be deemed unreasonable and therefore taxable.

First, CRA opined that placing a cap on the number of kilometres covered would not mean that the measurement was not based solely on kilometres. As such, it would not automatically be unreasonable.

However, the allowance could still be unreasonable since it may not be high enough in relation to the total motor vehicle expenses that the employee is expected to incur in the performance of their employment duties. If considered unreasonable, the allowance would be taxable.

***ACTION ITEM:*** *Structure compensation for the employment use of an employee's vehicle carefully to ensure that any allowance received will not be taxable to the employee. A taxable assessment after the fact can create significant employee/employer issues.*

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**COVID-19 MEDICAL EXPENSES: Tax Treatment**

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Medical expenses eligible for a personal tax credit are limited to those specifically provided for by the Income Tax Act. While an expense may clearly relate to an individual's health, it may still not be an eligible medical expense. CRA recently provided comments on a number of medical expenses related to COVID-19.

***Face masks***

In a February 25, 2021 Technical Interpretation, CRA opined that the costs of a non-medical mask, that is mostly used to protect others from the wearer, would not likely qualify as a medical expense. However, in the specific situation where a medical practitioner prescribes a medical face mask or respirator for a patient to cope with or overcome a severe chronic respiratory or immune condition, the mask or respirator would likely be an eligible medical expense.

***COVID-19 vaccines and tests***

In an April 22, 2021 Technical Interpretation, CRA opined that a COVID-19 vaccination received outside of Canada and a COVID-19 test (for example, those required for travel) must be prescribed by a medical practitioner to potentially be eligible as a medical expense. CRA also reiterated that they do not have the discretion to waive the prescription requirement.

***Leasing costs of temporary accommodations***

In a January 19, 2021 Technical Interpretation, CRA stated that the leasing cost of a second condominium to protect a family member's health during the COVID-19 pandemic does not qualify as an eligible medical expense.

***ACTION ITEM:*** *Although expenses may relate to an individual's health, they should still be reviewed to determine eligibility for the medical expense tax credit. Collect medical-related expenditures throughout the year such that at personal tax time, we can review whether an expense is eligible or not.*

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**CANADA EMERGENCY RESPONSE BENEFIT (CERB): Repayments**

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Self-employed individuals whose net self-employment income was less than \$5,000 will not be required to repay CERB, as long as their gross self-employment income was at least \$5,000 (in 2019 or the previous 12 months preceding the application) and they met all other eligibility criteria.

On May 12, 2021, a remission order that would allow this relief was released. For the debt to be remitted, individuals will need to file their 2019 and 2020 tax returns before December 31, 2022. The explanatory notes also indicated that CRA estimates approximately 30,000 individuals will benefit from this remission order.

Individuals who have already repaid CERB due to their net income being less than \$5,000 (but meeting all other eligibility criteria) will need to apply by completing Form T180 to get reimbursed for their repayment. Eligible applicants can expect reimbursements within about 90 days of submitting their applications. It is estimated that approximately 6,500 individuals could receive this type of reimbursement. CRA has also noted that, if a taxpayer is reimbursed for their CERB payment repaid in 2020, CRA may reassess their 2020 tax return.

***ACTION ITEM:*** *If you repaid CERB for the above reasons, make sure to apply to have the amount reimbursed.*

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**TFSA: Excess Contributions**

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Individuals who contribute excess amounts into their TFSA are subject to a penalty tax of 1%/month on the excess amount for each month that the TFSA is overcontributed. However, CRA has the discretion to waive this penalty tax if the excess amount resulted from reasonable error and the excess contribution, plus any income or capital gains reasonably attributable to them, is withdrawn without delay.

CRA recently considered whether relief on this penalty tax could be provided where the value of the TFSA had reduced to nil. They opined that, as the excess contribution could not be withdrawn without delay, they would not have the discretion to waive the penalty tax. As such, the penalty tax would continue to apply until the individual accumulated enough additional TFSA room to cover the excess contribution.

**ACTION ITEM:** *Under the facts above, CRA does not believe they have the discretion to waive the penalty tax on an excess TFSA contribution. Even where they have that discretion, they often refuse to waive the tax. Care should be afforded to ensure not to make excess TFSA contributions, and if an error is made, it should be corrected as soon as possible.*

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**WILL AND BENEFICIARY DESIGNATIONS: Are they current?**

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***RRSP designations***

A May 10, 2021 CBC article demonstrated the importance of reviewing RRSP beneficiary designations. The article discussed the unfortunate cascade of events where, in 2018, a 50-year-old individual went to the hospital for stomach pain and was diagnosed with cancer. He passed away three weeks later, leaving a spouse and a child. It appeared as if the deceased had not reviewed the designated beneficiary on his \$685,000 RRSP, which remained his mother from the time when he had originally set it up while single. Not only did this mean that the surviving spouse and child would not receive these savings, but also that they were effectively liable for the tax on the RRSP funds. Although the will included a clause making the spouse the 100% beneficiary of the estate, this did not override the RRSP beneficiary designation.

While the spouse and mother were able to settle and cover the tax bill with the proceeds of a life insurance policy, the case serves as a good reminder to review whether insurance and registered account beneficiary designations match the current intent of the parties.

***Wills***

In a March 16, 2021 Ontario Court of Appeal case, a dispute arose over the interpretation of a will regarding how proceeds from the sale of a cottage were to be distributed. As the deceased's daughters held a life interest in the cottage, the cottage was not sold until more than 40 years after the original owner's death. The proceeds from the sale of the cottage were to go to the grandchildren. However, within the 40-year period, one of the grandchildren passed away. At issue was whether the proceeds should be split among the four surviving grandchildren, or in five parts, with the deceased grandchild's estate and beneficiaries receiving a fifth.

The court used the "armchair rule," which seeks to interpret the will using the same knowledge that the testator had when making the will, and determined that it should be divided into four.

**ACTION ITEM:** *Ensure to review wills and beneficiary designations when major life events or changes in the family occur. Death or critical illness/injury can arrive unexpectedly, limiting the possibility of estate planning updates that can compound the emotional strife of loved ones after an individual's passing.*

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**CRA OR SCAMMER: Who is it?**

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Most, if not all of us, have received a call from someone claiming to be from CRA. They may threaten arrest or other such actions if a tax bill is not immediately paid via iTunes or Bitcoin, for example. While some of these calls have become easier to identify as fraudulent, scamming techniques and systems constantly evolve.

On May 26, 2021, CRA released a Tax Tip which discussed why a taxpayer might be contacted by CRA, when to be suspicious, and how to report potential scams.

Some signs indicating that the caller may be a scammer include:

- they do not provide proof of CRA employment (such as a name and an office location);
- they pressure you to act immediately;
- they ask you to pay with gift cards, cryptocurrency or some other unusual manner;
- they ask for information not normally included on your tax return or not related to amounts owed CRA, such as a credit card number; and
- they recommend you apply for benefits and ask for related information.

To verify a caller is a CRA employee, CRA recommends that an individual:

- tell the caller that they first want to verify their identity;
- ask for, and note the caller's name, phone number, and office location;
- call the CRA phone number from the official CRA website to confirm that the call was legitimate; and
- call the CRA employee back.

**To report a scam, go to [antifraudcentre.ca](https://antifraudcentre.ca) or call 1-888-495-8501.**

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***ACTION ITEM:*** Follow these instructions if you suspect a call is from a fraudster or scammer. Give us a call if you are uncertain how to respond to a call from CRA, whether or not it sounds legitimate.

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