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CHARTERED PROFESSIONAL ACCOUNTANTS

Table of Contents

Tax Tidbits 1

CPP Enhancements: Higher Contributions and Higher Benefits 1

First Home Savings Account (FHSA): A New Investment Tool...........................2

Cryptocurrency Exchange Cessation: Recordkeeping.......................................3

Multigenerational Home Renovation Tax Credit: More Housing Support 3

Disability Tax Credit (DTC): Electronic Applications..4

Paying Rent to Non-Residents: Withholdings Required............................4

Gifts Directed to Other Donees: Loss of Charitable Status 4

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

Tax Tidbits

Some quick points to consider…

- Most **CPP retirement, disability, survivor and child benefits** can only be paid **retroactively** for up to **11 months** after applying. Make sure to apply on time to avoid losing access to benefits.
- The **Canada Disability Benefit** Act, which received Royal Assent on June 23, 2023, is intended to provide financial security to **working-age persons** with **disabilities**. Neither eligibility criteria nor benefit amounts have been announced; however, consultations are ongoing.
- A series of **investment tax credits** relating to **clean economies** were announced in the fall of 2022 and spring of 2023. The government is currently conducting a **consultation on the design** and implementation of these initiatives.

CPP Enhancements: Higher Contributions and Higher Benefits

In 2019, the government commenced a **two-part enhancement** to the **Canada Pension Plan** (CPP), with full implementation to be completed in 2025. Phase 1 occurred from 2019-2023; phase 2 will occur from 2024-2025. Overall, the changes will require larger contributions but also will provide larger benefits.

Pre-CPP enhancement

CPP contributions for employees and employers under the **pre-enhancement CPP model** (referred to as base contributions) were calculated as **4.95%** of the **employee's pensionable earnings** to a maximum of the year's maximum pensionable earnings (YMPE; for 2023, $66,600), less the $3,500 basic exemption.

Phase 1

Referred to as the **first enhanced CPP contributions**, these are calculated as a percentage of the YMPE, less the $3,500 basic exemption, with the **contribution rate** for employees and employers gradually **increasing** from 4.95% in 2019 until it reached **5.95% in 2023**.

Phase 2

Referred to as **second enhanced CPP contributions**, the contribution rate for employees and employers will be **4%** but will only be applied to earnings above YMPE up to the **yearly additional maximum pensionable earnings** (YAMPE) ceiling. For 2024, YAMPE will be set at a number 7% higher than YMPE, estimated at $72,400. For subsequent years, YAMPE will be 14% higher, estimated at $79,400 for 2025.

The rates discussed above apply separately to both the employer and employee. Where the individual is self-employed, they are responsible for both the employer and employee contributions.

The payout

The **enhanced** portion of **CPP payouts** will **only be available** to those who **contributed** since the enhancements were introduced in 2019. Employees that have **fully participated** under the enhanced contribution regime for sufficient years will receive **maximum** retirement **benefits** set at **33% of pensionable earnings**, whereas benefits under the pre-enhancement regime would be 25%.

> **ACTION:** Employers, employees and self-employed individuals should all be aware that the costs of the CPP will continue to increase as the changes are fully phased in. Individuals should be aware that their take-home pay may be reduced, and employers should budget for these higher costs.

First Home Savings Account (FHSA): A New Investment Tool

The **tax-free FHSA** was introduced in 2023 to help **first-time home buyers** save up to $40,000 for a home purchase.

Individuals eligible to open an FHSA must be at least **18 years of age** and **resident** in Canada. The individual must also have **not lived** in a **home** that **they** or their **spouse owned** jointly or otherwise at any time in the year or the **preceding four** calendar **years**.

Contributions to an FHSA are **deductible** (like an RRSP). **Income earned** in an FHSA and qualifying **withdrawals** from an FHSA made to **purchase** a first **home** are **non-taxable** (like a TFSA).

The **lifetime limit** on contributions is **$40,000**, subject to an **annual contribution limit** of **$8,000**, both of which apply at the **individual level**. Each spouse (or common-law partner) could invest $40,000 and withdraw the full value (including investment income and growth) tax-free to acquire their first home. Individuals can carry forward unused portions of their annual contribution limit up to a maximum of $8,000. Individuals can also **transfer funds from their RRSP to** an **FHSA tax-free**, subject to the $40,000 lifetime and $8,000 annual contribution limits.

The **maximum** participation **period** for an **FHSA** ends at the earliest of:

- **15 years** after opening an FHSA;
- the end of the year following the year of the **individual's 70th birthday**; and
- the **end of the year** following the year when the individual first makes a **qualifying withdrawal** from an FHSA.

Any funds remaining in the plan after the maximum participation period could be **transferred tax-free** into a **RRIF** or an **RRSP without eroding contribution room**. **Otherwise**, the funds will have to be **withdrawn** on a **taxable basis**.

Timing of opening an FHSA

A June 28, 2023 Advisor's Edge article (How to **properly plan** the **opening of an FHSA**, Charles-Antoine Gohier) discussed the **impact** of individuals **purchasing homes later in life** on **FHSA** planning.

The article quoted a study from 2020 that estimated that the **average age** to **buy a home** in Canada is **36**. If an individual opens an account at age 18, the plan must be closed no later than 15 years later, that is, when the individual is 33. If the individual contributes the annual maximum of $8,000 for the first five years to reach the maximum contribution of $40,000, assuming a 4.5% return, the **balance** of the **FHSA** would be **$74,221** at the end of 15 years. If not used for a home, the individual must either withdraw the balance on a taxable basis or roll the balance into their RRSP on a tax-free basis. While **rolling** the **FHSA into** the individual's **RRSP** does not erode their RRSP contribution room, **no tax-free withdrawal** would be possible for **subsequent use** of the **funds** to purchase a first home. Up to $35,000 could be withdrawn from the RRSP under the home buyers' plan, but this would be subject to repayment conditions. Where sufficient funds are available in the RRSP, the home buyers' plan can be used in conjunction with a tax-free FHSA withdrawal.

Home buyers' plan (HBP)

In a May 15, 2023 French **Technical Interpretation**, CRA was asked whether an individual could **withdraw** $8,000 under the **HBP** and **contribute the funds** to a **tax-free FHSA**, knowing they would purchase a qualifying home the following month.

CRA first noted that the **HBP** and **FHSA** can be used for the **same home purchase**. Provided that the relevant **requirements of both plans** were **complied with**, the taxpayer could **contribute** the **HBP** withdrawal as a **deductible FHSA** contribution, then take a **qualifying withdrawal** from the FHSA in respect of the **same home purchase**.

This would be an **alternative** to rolling funds from the RRSP to the FHSA. Using the HBP approach would provide an **immediate deduction** for the FHSA contribution (a rollover would generate no deduction) but would also **require** the **HBP** withdrawal to be **repaid** to the RRSP in future years to avoid tax. The legislation does **not** impose any **minimum period** that contributions must **remain in an FHSA** before being withdrawn to acquire a home.

Tax-free qualifying withdrawals

A May 23, 2023 Advisor's Edge article (What are the **FHSA qualifying withdrawal rules**?, Rudy Mezzetta) discussed the conditions for a qualifying withdrawal.

The taxpayer holding the FHSA must be a **resident of Canada** at the time of withdrawal and remain so until the qualifying home is acquired.

The taxpayer must also have a **written agreement** to buy or build a **qualifying home** before **October 1** of the **year following** the **first qualifying withdrawal**. Further, they must **occupy or intend to occupy** the qualifying home as a **principal place of residence** within one year after buying or building it. The article indicated that CRA had confirmed, in an email, that there is **no minimum** amount of **time** that the taxpayer must live in the qualifying home. The article also noted that if the acquisition of the home before October 1 of the following year was frustrated by unforeseen events, the taxpayer may have to provide evidence supporting their intent to occupy the property to avoid the withdrawal being subject to tax.

The individual must also be a **first-time home buyer**, defined as someone who has not owned or jointly owned their principal place of residence in the current year or any of the previous four years, to make a qualifying tax-free withdrawal. **Unlike** the requirements for **opening an FHSA**, home **ownership** by the individual's **spouse** or common-law partner is **not considered** in the definition of a **qualifying withdrawal**. The individual **may own** the **qualifying home** for up to **30 days prior** to the qualifying withdrawal and still be a first-time home buyer.

> **ACTION:** Consider whether opening up and contributing to an FHSA is an option for you or a family member.

Cryptocurrency Exchange Cessation: Recordkeeping

A June 7, 2023 CryptoTaxLawyer.com article (**Binance Bids Canada Bye-Bye! Canadian Tax Implications** for Cryptocurrency Investors and Traders) reminded Canadians about the importance of **maintaining an offline record** of transactions as exchanges, such as Binance, shut down in Canada. On May 12, 2023, Binance announced that Canadian users will be required to **close** any **open positions** by **September 30, 2023**.

Once the exchange is closed to Canadians, there is the possibility that **access to records** will **disappear**. Such records are necessary to **support tax positions** and filings. The article also noted that records may need to be maintained well **beyond six years** as they can support the determination of tax that may occur much farther into the future. For **example**, if a cryptocurrency was purchased in 2015, but is sold in 2025, records must be maintained to **support the cost** of the cryptocurrency sold for reporting purposes in 2025.

> **ACTION:** Ensure records of transactions are retained offline in the event that they are no longer available online in the future.

Multigenerational Home Renovation Tax Credit: More Housing Support

The **multigenerational home renovation tax credit** is a **refundable tax credit** applicable to the costs of **constructing a secondary suite** for an eligible person (generally a relative either age 65 or over, or eligible for the disability tax credit) to live with a qualifying relation. The tax credit is available on up to **$50,000 of eligible expenditures** incurred after 2022 at a **rate of 15%.**

In a March 6, 2023 **Technical Interpretation**, CRA confirmed that the **eligible person** must ordinarily **inhabit**, or **be intended** to ordinarily inhabit, the **new dwelling unit** constructed, but **does not** have to reside with the **qualifying relation before** the renovations are undertaken.

In a second March 6, 2023 **Technical Interpretation**, CRA was asked whether the construction of a **separate, detached housing unit** on the **same parcel** of land as a **principal housing unit**, such as a carriage house or **laneway house**, would be eligible. CRA noted that a **qualifying renovation** must enable the qualifying individual to **reside in the dwelling** by establishing a **secondary unit within the dwelling**. CRA indicated that a **second detached housing unit** located on the **same parcel of land** as the primary dwelling unit would be considered to be located **within the dwelling** (that is, the dwelling would be considered to include the subjacent land) and **would qualify** for the credit.

CRA noted that **all other requirements** must be met, cautioning that this includes the second property being permitted under local law and regulations, as many municipalities do not permit detached secondary units.

> **ACTION:** If building a secondary suite for a family member 65 years of age or older, or eligible for the disability tax credit, check whether you can claim this new credit.

Disability Tax Credit (DTC): Electronic Applications

The DTC is a **non-refundable tax credit** that provides tax relief for individuals (or those that support those individuals) who have a **severe and prolonged impairment** in **physical or mental functions**. To access the DTC, eligible individuals must apply for it by completing **Form T2201, Disability Tax Certificate**. Recently, CRA updated their services so that this application can be completed and submitted entirely **electronically**.

The patient can complete the non-medical portion (Part A) of Form T2201 **online** in **CRA's My Account** with data prepopulated from CRA's files. Doing so will generate a **reference number** that can be provided to the **medical practitioner** for entry when they complete the medical certification (Part B) within the existing digital application (https://apps.cra-arc.gc.ca/ebci/uisp/dtc/patient). The information is **automatically submitted to CRA** on **completion** of the medical certification (Part B), provided the medical practitioner has entered the reference number.

The reference number will **remain** on **My Account** until the medical certification (Part B) is completed. Representatives cannot currently complete the non-medical portion (Part A) through their Represent a Client account.

To use this **new option**, the patient (person applying for the DTC) must **register** for **CRA's My Account**.

Alternatively, the non-medical portion (Part A) can be completed over the phone, either by calling the personal tax general enquiries line (1-800-959-8281) or through a new automated voice system (1-800-463-4421). The automated voice system indicates that it is intended to be used only by the disabled individual.

> **ACTION:** To speed up and simplify the process for applying for the disability tax credit, consider using the electronic method.

Paying Rent to Non-Residents: Withholdings Required

In a March 30, 2023 **Tax Court of Canada** case, the taxpayer was assessed for **failing to withhold taxes** on **rent paid** on Canadian real estate **to a non-resident**. **Penalties and interest** were also assessed.

The **information** known to the **taxpayer** was **limited** to an Italian telephone number on the lease document (with a Canadian number), the landlord's email address ending with ".it" rather than ".ca" or ".com" and some Italian writing at the bottom of an email. The **taxpayer argued** that he **did not know** that the **landlord** was a **non-resident**, and that a **due diligence defence** should apply.

Taxpayer loses

The Court first noted that a **non-resident** is subject to a **25% flat tax** on **gross rent** received on Canadian property. The **Canadian resident** paying the rent is **required to withhold** and remit this tax and is **liable for it** if this is not done. Penalties and interest on this amount also apply.

The Court then noted that the **withholding requirement** exists **regardless** of whether or not the taxpayer **knows** that the **landlord is non-resident**. Further, there is **no due diligence defence** in respect of the **tax withholding**. As such, the **taxpayer** was **liable** for the tax not withheld.

The Court stated that a **due diligence defence** could apply to **penalties and interest**. However, the taxpayer provided **no evidence** of any efforts to **confirm the landlord's residency**. The **absence** of any **reason** to question the **landlord's residency** was **insufficient** – **due diligence** requires taking **positive steps** to ensure compliance.

> **ACTION:** Ensure to take proactive steps to understand a landlord's residency status. Renters can be liable for unremitted withholdings even if they do not know the landlord's residency status.

Gifts Directed to Other Donees: Loss of Charitable Status

In some situations, a **registered charity** may be asked to **receive donations on behalf** of another organization or cause. While this may seem like a good way to generate funds and reward donors with charitable contribution receipts, it can have **serious implications** for the charity.

A February 1, 2023 **Technical Interpretation** considered a **charity** that would **collect funds, issue receipts, and then disburse** the **funds to** a **qualified donee** (a municipality). The municipality would **then direct** the **funds to** a **non-qualified donee**. The charity's intention was to assist a non-qualified donee (in this case, a non-profit organization) in a fundraising campaign by collecting funds and issuing receipts.

A **charity** may have its **status revoked** if the charity:

- carries on a business that is not a related business of that charity;
- **fails to expend** amounts in any taxation year on charitable activities carried on by the charity and by way of **qualifying disbursements**, the total of which is at least equal to the charity's disbursement quota for that year; or
- makes a **disbursement**, **other than**
  - one made in the course of charitable activities carried on by it, or
  - a qualifying disbursement.

If the charity's **disbursement to** the **municipality** was **not a qualifying disbursement**, the charity could have its **status revoked**.

A **qualifying disbursement** includes a **gift** to a **qualified donee**. A qualified donee includes a municipality in Canada that is registered by the Minister.

It is a **question of fact** as to **whether** the transfer to the **qualified donee constituted a gift received**, and therefore a **qualifying disbursement**. CRA's general view is that **donations** can be **received** and **receipted by** a **qualified donee** (such as the municipality), **provided** that the qualified donee **retains discretion** regarding how the donated funds will be spent. If a qualified donee is merely **acting as a conduit** by collecting funds from donors, including a charity, on behalf of an **organization** that is **legally** or otherwise **entitled** to the **funds** so donated, the **qualified donee** is **not in receipt** of a **gift**. In this case, the gift from the charity would not be a qualifying disbursement.

A charity may also have its status revoked if it **accepts a gift**, the granting of which was **conditional** on the charity **making a gift** to another person, club, society, association or organization **other than a qualified donee**.

ACTION: Caution and professional guidance should be sought should a charity consider accepting donations on behalf of another organization.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

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