Fall 2011

In our newsletter, we try to offer a variety of current information and helpful business advice. We welcome any comments.

Tax Free Savings Account
Determining Your Contribution Room

There have been many letters sent this year to taxpayers where Canada Revenue Agency is assessing penalties due to excess contributions to their Tax Free Savings Accounts. These were due to the taxpayers misunderstanding of the rules of contribution and how to calculate contribution room. Most commonly misunderstood is the rule that withdrawals in the current year only lead to contribution room in the **next** fiscal year, not the current one.
Your Tax Free Savings Account Contribution room at any point in time is made up of the following;

- Your TFSA dollar limit of $5,000 for the current year
- Any unused TFSA contribution room carried forward from the previous year, and
- Any withdrawals made from the TFSA in the previous year, excluding qualifying transfers

Depositing anything more than this will result in an excess contribution, which are taxed at 1% of the highest excess amount the month the excess occurred and any months following until the excess is withdrawn.

A simplified example is as follows:

March 2009 - John contributes $5,000 to open TFSA	He has $5,000 annual limit, so this is good.
March 2010 - John contributes $6,000 to the TFSA	This results in an excess contribution of $1,000 because he only had $5,000 current year contribution room, no unused contributions left over from 2009, and no 2009 withdrawals.
July 2010 - John withdraws $2,500 from the TFSA	He has removed his excess contribution of $1,000 plus an additional $1,500. However, this additional amount of $1,500 will only be added to his contribution room in 2011.
February 2011 - John contributes $6,500 to TFSA	This is good, because he has his $5,000 current year contribution room, there was no unused 2010 contribution room but he had withdrawals in 2010 of $1,500 giving him total contribution room of $6,500.

Home Buyer's Tax Credit

In 2009, Canada Revenue Agency introduced a new **non-refundable tax credit** of up to $750 ($5,000 @ 15%) for **first-time home buyers**. In order to be considered a first-time home buyer neither the individual nor their spouse can have owned and lived in another home in the calendar year of the home purchase or in any of the four preceding years. A qualifying home can be an existing home or a new construction in Canada and must be occupied as a principal residence within one year of the purchase.

This credit is also extended to **persons with a disability** without being a first time homeowner, if the purpose of the acquisition is to provide a more accessible dwelling or to enable the person to live in an environment better suited to their personal needs and care. A person with a disability is considered to be one receiving the disability tax credit in the year of acquisition, or would be able to claim the disability if not for offsetting attendant care or care in a nursing home expenses being claimed as medical expenses.

Director's Liability

Every incorporated business is required to have at least one director. Typically in an owner-manager business, the shareholder and the director are the same person. The director's duty is to act in the best interest of the corporation and avoid conflicts of interest. If the director does not exercise due care he can become personally liable for the corporation's financial liabilities. For example, if care is not exercised to ensure a safe workplace for employees and an accident occurs, the director can become personally liable.

Directors of Corporations have liabilities under various statutes, the most common being amounts owing to the Crown for various taxes, including payroll deductions for CPP, EI, and Tax. Sometimes corporations that are struggling financially will use these source deductions in order to finance day to day operations of the company and in the end when they have to close doors, the director can become liable for the unremitted deductions plus penalties and interest. CRA has been very zealous in recent years in following up on unremitted source deductions and going after directors if necessary.

However, there are ways to lessen the risk of liability which include:

- Conducting due diligence when making major decisions for the corporation.
- Relying on opinions from independent and appropriate third parties.
- Avoiding any conflicts of interest.
- Acquiring proper director's liability insurance.

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