

# COMMENT

Edition 296 – March / April 2016

---

## TAX SAVINGS FOR STUDENTS

Tax season offers a valuable opportunity to ensure all legitimate tax advantages are identified and optimized, even for students enrolled in a Canadian post-secondary institution who might think their income is too low to warrant attention.

In addition to income from part-time or summer employment, other common types of income for students includes research grants in excess of deductible expenses, interest and investment income, and educational assistance payments from investment income earned in an RESP.

Once income is accounted for, students should assess available credits and deductions.

### Tuition Amount

Tax slips are provided to students by their educational institution with details of eligible tuition amounts; however, caution should be exercised because the issuance of a tax slip does not always indicate eligibility for the tax credit. The institution issues tax receipts to all students regardless of who actually pays the tuition. If a student's employer (or parent's employer) pays or reimburses the tuition, the tuition credit can only be claimed if the amount was included in the student's (or parent's) income. As well, tuition paid through a job training program or government-paid program for athletes only qualifies for the credit if the amount was included in the student's income.

It is important that students follow the tax rules because claiming a benefit amount for which an individual is not eligible can result in reassessments, interest and penalties. Double-dipping, such as claiming a tuition credit when an employer funded the cost, can have significant consequences. Keep in mind, tuition amounts paid by an employer are more beneficial than the tax credit.

Students pay a variety of fees throughout the school year that are not eligible for inclusion on the tuition slip issued by the educational institution. Examples of amounts not

eligible as tuition include board and lodging, student activity fees, and administrative penalties.

Examination fees paid to an educational institution, professional association or provincial ministry to take a professional, trade or occupational examination are eligible to be treated as a tuition expense. While there are strict guidelines as to the type of organization or professional body issuing the receipt, the addition of examination fees broadens the benefit that arises from the tuition tax credit.

### Education Amount

Educational institutions issue tax slips confirming the student's full or part-time status for eligible months in the taxation year. This allows students to claim an education tax credit based on amounts of \$400 (full-time) or \$120 (part-time) per month. Similar to the tuition tax credit, those students whose employer or non-arm's length party paid or reimbursed the student for the tuition amount are not eligible to claim the education tax credit.

### Textbook Amount

Students who are eligible to claim the education amount may also be eligible to claim the textbook tax credit, which provides the student with a credit based on amounts equal to \$65 (full-time) and \$20 (part-time) for each eligible month noted on the institution-issued tax slip.

Note that the federal budget of March 23, 2016, proposes to eliminate the education and textbook amount credits effective January 1, 2017. However, the budget also proposes to allow the carry forward of these amounts that arose prior to 2017. The tuition amount credit is not impacted by these proposals.

### PLANNING TIP

Tax credits for tuition, education and textbooks are first claimed by the student up to the amount required to reduce the student's income tax payable to zero. If the amount not claimed by the student is

less than \$5,000, the difference between \$5,000 (or total eligible amount if less than \$5,000) and the amount claimed by the student can be transferred to the student's spouse or common-law partner, or to the parent or grandparent of the student or the student's spouse or common-law partner. The transfer option is only available in the year the tuition is incurred.

Any amounts not utilized or transferred by the student can be carried forward to a future year, and must be claimed in the first year that taxes are payable. Transferring an amount out of the carry forward pool is not an option. When students want to retain tuition amounts in a carry forward pool, it is important that they file an income tax return, even if no taxes are payable.

This system works well because the combination of transfers and carry forwards ensures all tuition amounts can qualify for the credit.

### Moving Expenses

The cost of moving between school and a parent's home over the period while attaining a degree can add up. Full-time students enrolled in a post-secondary university or college may be eligible to claim certain moving expenses. The move must be at least 40 kilometres closer to the new place of work or school.

A student moving to attend school may be able to deduct eligible moving expenses from the part of any scholarship, fellowship, bursary, or grant that is required to be included in the student's income. Even part-time employment while attending school is considered

employment income against which eligible moving expenses could be deducted. Alternatively, students moving to begin work such as summer employment or running a business may qualify to claim eligible moving expense against the income earned from employment or self-employment at the new work location. The 40 kilometre measurement applies to all eligible moves and is measured against the shortest public route.

Moving expenses that exceed eligible income amounts can often be carried forward to the following year and deducted against the same type of eligible income amounts in the subsequent year.

#### PLANNING TIP

Receipts are required for most moving expenses, so saving the receipts is important.

### International Students

International students are not automatically exempt from taxation. Rather, international students studying in Canada need to begin by determining their residency status for income tax purposes. Residential ties to Canada together with deeming provisions that consider a student's length of stay in Canada during a taxation year are used to establish residency status. An international student residing in Canada, even for part of a year, could be considered a Canadian resident for income tax purposes. While there is certainly the potential for an income tax liability, these individuals may be eligible for benefits or credits such as the Canada child tax benefit or universal child care benefit.

Optimizing available credits and deductions is a great way to ensure every dollar pays a good return!

## THE BENEFITS OF AGING

A great deal of attention in today's society is placed on the concept of aging particularly as Canada's baby-boom cohort (those born between 1946 and 1965) reach retirement age. In a 2013 study, Statistics Canada projected the proportion of seniors will exceed the proportion of children by 2017. Aging in Canada offers many benefits not otherwise available.

Financial security is something everyone worries about at different stages in their life, but can become a greater concern particularly as one ages. The shift from employment to retirement means an individual's income tends to become fixed with less opportunity for regular increases during retirement years. As such, Canada's tax and social system are important components that help

provide financial security for seniors. The following is an overview of a few federal financial resources that can help supplement income during retirement.

**Old age security** (OAS), is a federal government pension program targeted toward Canadians age 65 and older. OAS is funded out of general tax revenues and does not require individual contributions. The 2012 federal budget put a change in motion to adjust the start date to age 67. The phase-in of the start-date change was supposed to impact individuals born after April 1958; however, the March 2016 federal budget proposes to retain the age 65 start-date.

The OAS benefit increases quarterly based on the all-items index, a subset of the consumer price index. A 15 per cent claw-back of the benefit amount begins when an individual's net income exceeds \$72,809 (2015). A deferral of the start-date is available up to age 70, resulting in an increased benefit amount of 0.6 per cent for every month the pension is delayed beyond age 65. Waiting the full 60 months to begin the benefit can result in a 36 per cent increase in the pension benefit.

### Income Tax Benefits

The **age tax credit** becomes available in the year a taxpayer turns age 65. The 2015 federal tax credit is based on an amount of \$7,033, which can generate a maximum credit of \$1,054.95 (15% of \$7,033). The credit is a direct reduction to the income tax payable by an individual. A full credit is available to those whose net income is less than \$35,466. As an individual's income increases beyond the \$35,466 level, the credit is clawed back at the rate of 15 per cent until it is fully extinguished at an income level of \$82,353.

**Pension income splitting** provides a married or common-law couple the opportunity to jointly elect to split up to 50 per cent of eligible pension income. The value of this concept is the opportunity to shift income between individuals resulting in tax savings across the couple. In general terms, the definition of eligible pension income includes periodic income from a pension and, beginning at age 65, includes periodic income from a RRIF or registered annuity. To access this benefit, the couple jointly elect the split in their respective annual income tax returns. This allows the couple to retrospectively assess their financial outcome for the past year and optimize the election.

## INCORPORATED EMPLOYEE

When a business venture operating under a corporate structure is considered to be carrying on a personal services business (PSB), a unique income tax regime restricts the tax benefits available. In very general terms, this situation can arise when a corporation provides services through a single person to another business and the services being provided would typically be performed by an employee or officer of the business to which the services are being provided. The individual performing the services may be considered to be an "incorporated employee."

The **pension income amount** is used in the calculation of a tax credit arising for those individuals who are in receipt of eligible pension income, including those who have utilized the pension income splitting benefit. The definition of eligible pension income mirrors that used for pension income splitting. The federal tax credit is 15 per cent of the eligible pension income up to \$2,000, resulting in a maximum credit of \$300. The credit is used to lower an individual's total tax payable.

### Other Thoughts

Many retailers and service providers offer a discount to seniors. While the discount is often not clearly posted in a provider's establishment, an individual would be remiss not to ask. Keep in mind that when discounts are available, it is a benefit offered at the provider's discretion and the definition of a senior often varies, typically beginning somewhere between ages 55 and 65.

Researchers at the University of Queensland in Australia found that older people had better immune systems because they have faced more epidemics and viruses over the years. They observed that 20 year olds can expect to catch two or three colds per year, while those in their mid-fifties averaged only one to two colds per year.

Older people live longer. The average 25 year old has a life expectancy of about 80 (men) and age 84 (women). However, a 95 year old can expect to live, on average, to 97 (men) and 98 (women).

Dr. David Foot, in his book "Boom, Bust & Echo," highlighted that aging occurs every year in a systematic fashion. While aging may present new challenges, a review of the silver lining will help ensure that any and all benefits are maximized.

In an August 12, 2015, Tax Court of Canada decision in *C. J. McCarty Inc. v. The Queen*, Justice Lyons found in favour of the taxpayer who had appealed a Canada Revenue Agency (CRA) assessment that characterized the business relationship as a personal services business.

The key facts of the case were as follows:

- C. J. McCarty Inc. (CJ) entered into three consulting agreements with MEG Energy Corp (MEG), an arm's length company, effective from December 2005 to December 2008

## COMMENT

- CJ was a Canadian controlled private corporation owned by Bruce McCarty, his spouse and adult daughter.
- Bruce McCarty worked for CJ providing consulting services to MEG on CJ's behalf, with CJ being compensated on an hourly basis.
- The CRA assessed the business arrangement to be that of a PSB, whereby they considered Bruce McCarty to be performing work as an incorporated employee in respect of the 2007 and 2008 taxation years.
- The result of the CRA's assessment meant that CJ was restricted in the type of business expenses that could be deducted and was not eligible for the small business deduction.

Justice Lyons analyzed the facts of the case pursuant to the same type of analysis established by the Federal Court of Appeal in *Wiebe Door Services Ltd v. Canada* and the Supreme Court of Canada in *671122 Ontario Ltd. v Sagaz Industries Canada Inc.*, which considered the issue of whether a person is considered an employee or an independent contractor. The analysis included a review of the case facts in respect of the following factors: control, integration, tools, and the hiring of helpers, as well as the chance of profit and risk of loss.

Justice Lyons' review found:

- The following factors weighed in favour of Mr. McCarty being an "independent contractor" -
  - o MEG had no meaningful control over Mr. McCarty's work activities.
  - o Mr. McCarty's activity was not integral to MEG's business as the contract was to supervise a building project.
  - o While MEG provided Mr. McCarty with a cell phone, computer and software, Mr. McCarty provided certain administrative tools required for his work.

### Authors:

James W. Kraft, CPA, CA, MTAX, TEP, CFP, CLU, CH.F.C.  
Deborah Kraft, MTAX, LLM, TEP, CFP, CLU, CH.F.C.

### Published by:

#### The Institute

390 Queens Quay West, Suite 209  
Toronto, Ontario M5V 3A2  
T: 416.444.5251 or 1.800.563.5822  
F: 416.444.8031

[www.iafe.ca](http://www.iafe.ca) • [info@iafe.ca](mailto:info@iafe.ca)

- o While all of Mr. McCarty's business expenses were reimbursed by MEG, Mr. McCarty had a monthly cap on the number of hours he could bill, which meant he had a chance of profit and risk of loss.
- The following factor weighed in favour of "employee" status -
  - o While Mr. McCarty employed his wife and daughter in his consulting company, all other employees were paid by MEG.

Based on the entirety of the evidence and the weighting of the factors, the court concluded that Mr. McCarty was not an incorporated employee of MEG. This outcome entitled CJ to claim the small business deduction and was not subject to the PSB restrictions with respect to the deduction of business expenses.

A personal services business is defined in the Income Tax Act to be a business carried on by a corporation where the individual (or a related person) performing the services is a "specified shareholder" and could reasonably be regarded as being an officer or employee of the business to which the services are being provided. There are two exceptions to the definition: the corporation employs more than five full-time employees or the services are being provided to an associated corporation. Generally speaking, the term "specified shareholder" is a taxpayer who owns, directly or indirectly, at any time in the year, at least 10 per cent of the issued shares of any class of capital stock of the corporation or a related corporation.

Individuals are allowed to arrange their affairs so that they incur the least amount of tax; however, a careful understanding of the rules will help to avoid unnecessary surprises. Planning involves ensuring that the rules and definitions are met in order to achieve the results desired.

This commentary is published by The Institute in consultation with an editorial board comprised of recognized authorities in the fields of law, life insurance and estate administration. The Institute is the professional organization that administers and promotes the CLU<sup>®</sup> and CHS<sup>™</sup> designations in Canada.

The articles in Comment are not intended to provide legal, accounting or other advice in individual circumstances. Seek professional assistance before acting upon information included in this publication.

Publication Agreement # 40069004

Advocis<sup>®</sup>, The Institute for Advanced Financial Education<sup>™</sup> (The Institute<sup>™</sup>), CLU<sup>®</sup>, CHS<sup>™</sup>, CH.F.C.<sup>®</sup> and APA<sup>®</sup> are trademarks of The Financial Advisors Association of Canada (TFAAC). The Institute is a wholly owned subsidiary of Advocis<sup>®</sup>. Copyright © 2015 TFAAC. All rights reserved. Unauthorized reproduction of any images or content without permission is prohibited.

Copyright 2015 ISSN 0382-7038

All Rights Reserved