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**NEW ROLLOVER
TO REGISTERED
DISABILITY
SAVINGS PLANS**

**NEW ROLLOVER TO REGISTERED
DISABILITY SAVINGS PLANS**

When a person dies, amounts received out of the person's registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or registered pension plan (RPP) by the person's financially dependent child or grandchild are normally included in the child's (or grandchild's) income. However, in most cases the Income Tax Act allows the child, if dependent by reason of physical or mental infirmity, to contribute the proceeds to the child's own RRSP, or to acquire an annuity payable for life or to age 90, and claim a corresponding deduction from income. In other words, the proceeds received upon the parent's death can be "rolled over" into the child's RRSP or to acquire an annuity, so no tax is payable on the proceeds received on the death.

In last year's federal Budget, the rollover was extended to financially dependent infirm children or grandchildren who receive RRSP, RRIF or RPP proceeds upon the parent's death and contribute them to a registered disability savings plans (RDSPs). Generally, in order to qualify for this rollover, the proceeds must have been received as a consequence of the death of the parent after March 3, 2010 (but see the transitional rules below). The contribution to the RDSP must be made in the year in which the proceeds were included in income or within 60 days after the end of the year. The rollover applies only to the extent that the child has lifetime contribution room left in respect of the RDSP – there is a \$200,000 lifetime limit for such contributions. The rollover applies to contributions made to the RDSP after June 2011. Note that the contributions will be included in the child's income when eventually withdrawn from the RDSP.

In addition to the above rollover, there is a transitional rollover that applies to certain RRSP, RRIF or RPP proceeds received as a consequence of a taxpayer's death after 2007 and before 2011. The transitional rollover applies to such proceeds received and included in income by any of: the financially dependent infirm child or grandchild; the spouse or common-law partner of the deceased; or another person who is a beneficiary of the deceased and receives the proceeds. The recipient will get an offsetting deduction if a contribution is made to the child's or grandchild's RDSP after June 2011 and before 2012. (Where the recipient is the child or grandchild, the death must have occurred before March 4, 2010 for the

MOVING EXPENSES

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RENTAL PROPERTY**

**FOREIGN EXCHANGE
GAINS AND LOSSES**

**EXPENSES FOR
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transitional rule to apply; for later deaths, the regular rollover described above applies.)

Another transitional rollover applies for deaths after 2007 and before 2011 where the recipient child or grandchild or spouse or common-law partner previously rolled the deceased's RRSP, RRIF or RPP proceeds into their own RRSP or RRIF, and then withdraws the proceeds and contributes them to the child's or grandchild's RDSP. The withdrawal will be included in income, but will be offset by the deduction for the contribution to the RDSP. This contribution must also be made after June 2011 and before 2012.

MOVING EXPENSES

Generally, you are allowed to deduct moving expenses if you move in order to carry on employment or a business, and your new home is at least 40 kilometres closer to the new work or business location than was your former home (to the new work or business location).



The types of moving expenses that qualify for this deduction include:

- your travel costs, including car expenses and amounts paid for meals and lodging in the course of the move;
- the cost of transporting or storing household effects, e.g. moving van expenses;
- the cost of meals and lodging near your old home or new home for a period not exceeding 15 days (say, where you sell your old home and the new home is not yet ready for you);
- if you rented your old home, the cost of cancelling the lease;
- if you sold your old home, your selling costs in respect of the sale of the home (e.g. legal costs, commissions);
- if you sold your old home, the cost of legal services in respect of the purchase of the new home and any tax, fee or duty in respect of the new home such as land transfer tax, but not including GST or HST;
- if you are still trying to sell your old home and are not living in it and not renting it out, generally any interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the home incurred in the period that you are trying to sell it, to a maximum of \$5,000;

- the cost of revising legal documents to reflect your new address, replacing your driver's license and non-commercial vehicle permits, and connecting or disconnecting utilities.

The moving expenses can be deducted to the extent of your income for the year from the new employment or business, as the case may be. Any excess expenses can be carried forward and deducted in any later year, subject to the same limitation.

Of course, you cannot deduct moving expenses to the extent they are paid or reimbursed by your employer, but most such amounts are not taxable benefits and therefore not taxable to you.

Simplified calculation for meals and travel

In respect of the meal and travel expenses described above, you can claim your actual expenses, and if so, you should retain your receipts. However, the Canada Revenue Agency (CRA) allows a "simplified method" of claiming your meal and travel costs, based on flat rates that the CRA publishes annually. If you use this simplified method, you do not have to keep receipts.

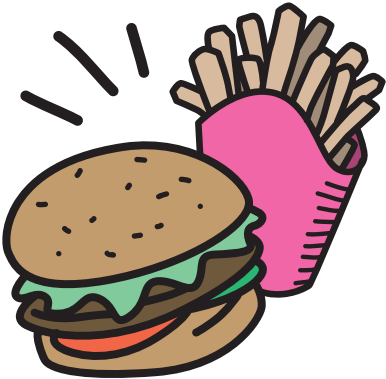
The CRA recently published the flat rates that apply for moves that occurred in 2010. The deductible flat rate for meal costs remains at \$17 per meal per person, to a maximum of \$51 per day (3 meals a day). This rate has remained the same for several years.

The deductible rate for 2010 for travel costs is based on the number of kilometres driven in the course of the move, and depends on the province from which the travel began. For example, for moves originating in Ontario the rate is 55 cents per kilometre, for those originating in Alberta the rate is 51.5 cents per kilometre, and for moves originating in Quebec the rate is 56.5 cents per kilometre. The rates for all provinces can be found at cra.gc.ca/travelcosts.

Moving expenses that are not deductible

The CRA states that the following moving expenses do **not** qualify for the deduction:

- most expenses for work done to make your home more saleable;
- expenses for house-hunting trips before you move;
- expenses for job hunting in another city (such as travel expenses);



- expenses to clean or repair a rented residence to meet the landlord's standards;
- expenses to replace personal-use items such as tool-sheds, firewood, drapes, and carpets;
- mail-forwarding costs; and
- costs incurred in the sale of your old home if you delayed selling for investment purposes or until the real estate market improved.

REPAIR COSTS ON RENTAL PROPERTY

If you own a rental property, most routine and recurring repair costs are deductible in computing your income in the year in which they are incurred. More specifically, if the expenses are considered current expenses, they are fully deductible in the year that they are incurred. However, if they are capital expenses, they are not deductible on a current basis and are instead added to your capital cost of the property. Since they are added to the capital cost, they can normally be depreciated over time under the capital cost allowance (CCA) provisions of the Income Tax Act. However, the CCA rates for most residential buildings are quite low (typically 4% per year on a declining balance basis), so a current deduction is much more advantageous.

The distinction between a current expense and a capital expense is not set out in the Income Tax Act and is not always clear. The distinction has been left to the courts to determine. In general terms, the courts have held that a current expense is one that does not generate significant future benefits or a lasting advantage. On the other hand, a capital expense is an expense that generates a lasting advantage or benefit that extends significantly into future years.

As an example of the "lasting advantage or benefit" test, the CRA provides that the cost of putting vinyl siding on the exterior walls of a house is normally a capital expense. On the other hand, the cost of painting the exterior of a house is considered a current expense.

In addition to the above test, when it comes to real estate repairs expenses, the courts have provided other tests to determine whether they are current or capital. These other tests, which are also generally applied by the CRA, include the following.





- Does the repair add value beyond the original condition of the property, or merely restore it to its original condition? If the former it is likely a capital expense, and if the latter it is likely a current expense. As an example, the CRA states that where a roof or floor is replaced with a similar roof or floor, the costs are usually current expenses. Where, however, the new roof or floor clearly is of better quality and greater durability than the replaced one, the costs are likely capital.
- Is the expense for a separate property or for part of an existing property? If the former it may be capital, and if the latter it may be current. As an example, the CRA provides that the cost of buying a refrigerator for use in your rental property is a capital expense. An amount you spend for electrical rewiring is usually a current expense, as long as the rewiring does not improve the property significantly beyond its original condition.
- What is the value of the repair relative to the value of the property? If the value is relatively high, it may be indicative of a capital expense, although this is not always determinative. In this regard, the CRA notes that you “might spend a large amount of money for maintenance and repairs to your property all at once. If this cost was for ordinary maintenance that was not done when it was necessary, it is a maintenance expense, and you deduct it as a current expense.”

FOREIGN EXCHANGE GAINS AND LOSSES

Foreign exchange capital gains and losses are treated similarly to other capital gains and losses, in that one-half are taxable capital gains and allowable capital losses, respectively.

However, for individuals, the first \$200 of net foreign exchange gains or losses in a year are excluded in computing your capital gains for the year. Thus, if you had \$500 of net foreign exchange gains in a year, only \$300 would be counted as capital gains, and \$150 of those would be included in your income as taxable capital gains.

A foreign exchange gain or loss can occur when you exchange foreign currency for Canadian currency.

EXAMPLE

You purchased US dollars when the exchange rate was US\$1.00 = Cdn\$1.00. You later convert US\$1,000 of those dollars back into Canadian dollars when the exchange rate is US\$1.00 = Cdn\$1.10, which means you get back Cdn\$1,100. You will have a foreign exchange gain of Cdn\$100.

A foreign exchange gain or loss can also occur when you sell capital property acquired with foreign currency. In these cases, the cost of the property is computed in Canadian dollars using the exchange rate in effect at the time of purchase. Your proceeds of disposition are computed in Canadian dollars using the exchange rate in effect at the time of the disposition. A foreign exchange gain or loss will occur if exchange rates have changed between the time of acquisition and the time of sale.



EXAMPLE

You purchased some land in the United States as a long-term capital investment for US\$100,000 when the exchange rate was US\$1.00 = Cdn\$1.00, so that your cost of the property is equal to Cdn\$100,000. You later sell the land for US\$100,000 when the exchange rate is US\$1.00 = Cdn\$1.10, so that your proceeds of disposition are equal to Cdn\$110,000. You will have a gain of Cdn\$10,000, even though your US cost and US proceeds were the same.

If you sell property acquired with foreign currency, you may, of course, realize a gain that is not attributable to the foreign exchange rates. In other words, you may have a “regular” gain in addition to a foreign exchange gain or loss, which will effectively be combined into one gain or loss.

EXAMPLE

You purchased some land as a long-term investment in the United States for US\$100,000 when the exchange rate was US\$1.00 = Cdn\$1.00, so that your cost of the property is equal to Cdn\$100,000. You later sell the land for US\$200,000 when the exchange rate is US\$1.00 = Cdn\$1.10, so that your proceeds of disposition are equal to Cdn\$220,000. You will have a total capital gain of Cdn\$120,000, which is effectively comprised of a \$20,000 foreign exchange gain and a \$100,000 “regular” gain.

EXPENSES FOR COMMISSIONED EMPLOYEES

For most employees, the expenses that can be deducted for income tax purposes are quite limited. Among the available deductions, you may be able to deduct certain car and travel costs incurred in the course of employment. You can also deduct salary paid to an assistant, if required by your contract of employment. You may also deduct certain home office expenses such as supplies, rent, heat and utilities, and repairs and maintenance. In each case you must meet the specific requirements of the Income Tax Act, and you must have the form T2200 signed by your employer, certifying that you meet the requirements.

However, if you are employed in the selling of property or negotiation of contracts, and are at least partly compensated by a commission or bonus fixed by reference to such sales or negotiations, you are eligible for broader deductions. Basically, most expenses incurred for the purpose of earning such commission income will be deductible, other than most capital expenses. In addition to the expenses deductible by all employees, examples of additional items you can deduct include:

- In respect of a home office, a portion of your home insurance and property taxes;
- Leasing costs for computers or other equipment used in the employment;
- Blackberry / smartphone fees for phone, email and internet;
- Meals and entertainment with clients (these are only 50% deductible, as is the case for business expenses); and
- Advertising and promotional expenses.

In each case, the expenses must be pro-rated if they are also personal. For example, if you lease a computer and 50% of its use is personal and 50% is employment, you can only deduct 50% of the leasing costs.

However, if you choose to claim these additional expenses, there is a general limitation that the additional expenses, along with your travel and car expenses (but not including capital cost allowance or interest on a car loan), are deductible only to the extent of your commission or bonus income for the year.

However, if you decide to deduct only those expenses that are deductible for all employees, including the travel and car expenses, you are not subject to the commission or bonus limit.



Thus, the issue normally comes down to whether your travel and car expenses (not including capital cost allowance or interest on a car loan) exceed your commission or bonus for the year. If they do, claim the regular employee deductions; if they do not, claim the additional expenses as well, subject to commission / bonus limit.

Commissioned employees (as well as regular employees) can deduct capital cost allowance on a car used for employment purposes and interest expense on a car loan without regard to the commission / bonus limit.

U.S. SOCIAL SECURITY BENEFITS

Canadian residents receiving US social security benefits are required to include 85% of such benefits in taxable income for Canadian tax purposes.

However, effective for 2010 and subsequent years, only 50% of such benefits are included in taxable income, if the taxpayer has been resident in Canada and receiving U.S. social security benefits since before 1996. The reduction to the 50% rate brings it back in line to the pre-1996 inclusion rate, but only for taxpayers who were already subject to that rate before 1996.

Under the Canada-U.S. Tax Convention, such benefits received by Canadian residents are not taxable in the United States (i.e., not subject to withholding tax).

AROUND THE COURTS

Losses on cottage rental not deductible

If you own a cottage or similar property and use it as a rental property, you are generally allowed to deduct the related expenses if you can show that your intention was to earn income from renting out the property. On the other hand, if your main purpose of owning the cottage is personal, and any rental income is only incidental to your personal purposes, the CRA and the courts will generally deny your deductions to the extent they exceed your rental income.

This general proposition was confirmed in the recent *Daoust* case. The Federal Court of Appeal upheld a prior Tax Court of Canada decision holding that the taxpayer acquired his cottage for personal purposes, and that even though he rented out the cottage on occasion, his “profit and loss



experience” indicated that his primary intention was not to make a profit from the rental of the cottage. The Court concluded that the purpose of occasional renting out of the cottage was to reduce the cost of maintaining the property, and not to make a profit from renting it out. As a result, there was no source of income from which the expenses could be deducted, and the taxpayer’s losses from the property were disallowed.

Legal fees for lawsuit against home inspector not moving expenses

In the *Charbon* case, the taxpayer purchased a home and shortly thereafter discovered that the home had mold problems, which her home inspector had failed to discover and disclose. She sued the home inspector for damages and won the lawsuit. Shortly thereafter, she accepted a job in a different city (more than 40 kilometres away) and moved to a new home. She attempted to deduct her legal fees in respect of the lawsuit as moving expenses, seemingly on the grounds that they were necessary to make the home mold-free and therefore more saleable. The CRA denied the deduction.

On appeal, the Tax Court upheld the CRA decision and denied the deduction. The Court held that legal fees did not relate to the move, mainly because they related to a lawsuit that was instituted before the move. Therefore, the fees were not deductible.

* * *

This letter summarizes recent tax developments and tax planning opportunities; however, we recommend that you consult with us before embarking on any of the suggestions contained in this letter, which are appropriate to your own specific requirements.





Please contact me to discuss my financial and tax needs.

Please add my name to your tax letter mailing list.

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